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CURRENT TOPICS

Judges' Salaries

THE independence of the bench as well as its quality are involved in the present results of high taxation on the judges' salaries. The matter is one of constitutional importance and very general satisfaction will be felt at the announcement by Mr. GLENVIL HALL, in reply to a Parliamentary question, that legislation will be introduced this year. Sir HARTLEY SHAWCROSS, the Attorney-General, said at the annual meeting of the Bar on 25th April that he hoped that it would be possible to increase the salaries of judges as those now paid were "out of all relation to those which may be earned by successful men in commerce and the professions and thus ill reflect the great constitutional importance, high status, and public respect of the office of His Majesty's judges." He also said that the present arrangement under which a number of commissioners were appointed to deal with High Court cases should be only a temporary one. That involved no disrespect to the commissioners, but they did not possess in the eyes of the public the status which the judges enjoyed. He hoped that arrangements would be made to simplify and cheapen procedure and enable all litigants to have their cases tried, if they wished, by His Majesty's judges. This would mean some addition to their present numbers.

The Rules of the Supreme Court (No. 1), 1949

NEW High Court Rules (S.I. 1949 No. 761 (L.7)) came into operation on 26th April. Paragraphs 1 to 3, inclusive, oblige parties to actions for defamation to give particulars in certain circumstances. The rules are an implementation of recommendations by the Porter Committee (92 SOL. J. 626). The cases in which particulars are to be given are: (1) where the plaintiff alleges that the words or matter complained of were used in a defamatory sense other than their ordinary meaning; (2) where the defendant pleads fair comment on a matter of public interest or privilege the plaintiff must give particulars if he alleges express malice; (3) where the defendant pleads the "rolled-up plea" he must particularise which words are statements of fact and the facts or matters he relies on in support of the allegation that the words are true. Paragraph 4, which deals with payment into court in defamation actions, sets out the procedure for accepting such payment, notifying all defendants, taxing costs and continuance of the action against other defendants, subject to setting off the payment into court against damages recovered against other defendants. No interrogatories are now allowed under Ord. 31, r. 1A (para. 5), as to sources of information or grounds of belief against a defendant who has pleaded fair comment or privilege. Discovery may be granted of documents relating to any issue in an action for defamation under Ord. 31, r. 12 (para. 6). The instrument adds a new Ord. 54 (o) laying down the procedure for applications made pursuant to the Railway and Canal Commission (Abolition) Act, 1949. In Ord. 57, r. 17 (1) (relating to interpleader), the words "prepaid ordinary post" are substituted for "registered post."

Bail

THE Rules of the Supreme Court (Criminal Proceedings), 1949 (S.I. No. 721 (L.6)), which came into operation on 18th April, substitute a new r. 13 for rr. 13 and 13A of the Rules of the Supreme Court (Criminal Proceedings), 1938 (S.R. & O., No. 1576). The subject-matter concerns procedure on applications to the High Court for bail in criminal proceedings where the defendant is in custody. The judge may now, if he thinks fit, dispense with the requirement to furnish to the court a copy of the commitment and depositions. The new rules also provide for a recognisance or any sureties ordered by a judge to be entered into before a justice in the same manner as under the Summary Jurisdiction Acts and for the justice to cause the recognisance and any surety, or a statement of other security, to be transmitted to the clerk of the court to which the defendant stands committed for trial, or in any other case to the clerk of the court which committed the defendant. A copy must also be sent to the prison governor unless the recognisance is entered into at the prison. On failure to appear the recognisance can be enforced as provided in ss. 9 and 23 of the Summary Jurisdiction Act, 1879. Where there is an appeal or an application for certiorari, on abandonment or determination of the appeal any justice for the same petty sessional division as that by which the person was convicted or sentenced may issue process to enforce the decision in respect of which the appeal or application was brought, or, as the case may be, the decision of the High Court. The rules contain forms (1) of summons to admit to bail, (2) of order to admit prisoner to bail, and (3) of notice of bail upon order of judge.

Res Ipsa Loquitur?

UNDER the heading "Who is Right" the *Scots Law Times* of 23rd April contrasts the severe comment of the Division on the decision of a sheriff-substitute, that evidence in a bastardy case as to what was alleged to have taken place could not have been true as he had himself seen the *locus in quo* (*Hattie* v. *Leitch* (1889), 16 R. 1128), with the Lord Chief Justice of England's recent statement that, having himself seen the actual nameplates concerned in the case before him, it passed his comprehension how witnesses who testified that they had failed to see those plates had so failed. Under another heading: "Judicial Knowledge: Is it Increasing?" the *Scots Law Times* comments: "Soon no litigant may be safe in hiding behind the obtuseness of his witnesses, for every respectable old gentleman at or near his premises may be a judge expanding his judicial knowledge. No witness will dare to stray one millimetre from the path of truth lest he should meet with a sharp and very angry contradiction from His Lordship in the chair." It is, of course, quite true, as the Lord Justice-Clerk said in the Scottish case, that a judge may thus turn himself into a witness whose evidence is not subject to cross-examination, but the fact is that judges, juries and magistrates do it nearly every day. Sometimes the inference from a "view" is irresistible, and no expert knowledge or cross-examination can remove it. There are, however, cases where the inference is more remote, as in the Scottish case, and in the Scottish case, as the inference was not compelling, the sheriff-substitute would have done better to put to the witnesses, whose evidence he rejected, the facts which he considered compelled him to do so.

Planning Appeals

MINISTRY of Town and Country Planning Circular No. 69 referred to the large increase in the number of planning appeals to the Minister since the coming into operation of the Town and Country Planning Act, 1947, and made suggestions which would help to decrease the number of appeals (see *ante*, p. 206). A sign of the Ministry's difficulty in dealing with the large number of appeals is that they have recently abandoned the practice of holding a public local inquiry into nearly every appeal, and, in appeals where the development is of comparatively little importance and the issues are simple, are instituting "accompanied visits." An accompanied visit consists of a visit to the site of the proposed development by an inspector of the Ministry. At the site he meets the owner or his representative and representatives of the local authority and discusses the matter, but no public notice is given of the meeting, nor is there any formal inquiry. This seems to be an excellent method for facilitating the despatch of business in connection with these simple appeals. On the other hand, the very simplicity and cheapness of this new procedure may increase the number of appeals. The number of appeals to which the new procedure applies, while substantial, will no doubt nevertheless be fairly limited, and the majority of appeals will probably still form the subject of a local inquiry. Section 16 (2), applying s. 15 (2), of the 1947 Act requires the Minister, on an appeal, to afford to the appellant and the local planning authority, if either of them so desires, an opportunity of appearing before and being heard by a person appointed by the Minister. The accompanied visit complies with this requirement as much as a local inquiry.

Owners of Building Plots and the Global Fund

GOOD news for owners of building plots was contained in a Parliamentary written reply by Sir STAFFORD CRIPPS (see fully p. 304, *post*). He stated that it had been decided to extend the date from 7th January, 1952, to 1st January, 1953, for the arrangement by which persons owning building plots on 1st July, 1948, who started to build a house for occupation by themselves or an immediate relative by 7th January, 1952, would receive a payment from the £300,000,000 fund equal to the development value of the plot for the erection of the house, and might have their development charge set off against that payment. He added that if an owner, who on 1st July, 1948, owned a single building plot and no other building land, was prevented from building a house on his plot because the plot was compulsorily acquired, or a previous planning permission was revoked, before 1st January, 1953, he also would be entitled to a payment from the £300,000,000 equal to the development value in the plot for the erection of one house; and if he started to build a house on another site before 1st January, 1953, he would be entitled to have the development charge set off against that payment, in so far as it was sufficient to cover the charge. These arrangements would also apply to an owner of a single building plot if he either sold the plot for immediate development and himself assumed liability for the payment of development charge, or himself built a house on the plot and sold the site and house together at a price inclusive of charge, provided in either case that the charge was determined before 1st January, 1953. He further announced that the scheme by which registered builders would receive a payment from the £300,000,000 equal to the development value, and might set off against it development charge meanwhile incurred in respect of an area of land equal to that which they developed during a five-year pre-war period, would be extended beyond registered builders, and the Central Land Board had been given a discretion to apply it to developers of housing and industrial estates (such as most housing associations and some trading estates) who could satisfy them that it was their practice to assume full practical and financial responsibility for the construction of buildings on their own land and for their sale or letting when completed. None of the concessions could be of any effect if the owner concerned had not submitted his claim to the Central Land Board by 30th June next.

Recent Decisions

In *Russell* v. *Attorney-General*, on 28th April (*The Times*, 29th April), BARNARD, J., held that a ceremony of marriage in church was valid notwithstanding that the requisite period of twenty-one days had not elapsed between the date of notice of the intended marriage and the date of the ceremony. The marriage had taken place in 1912 and the parties had lived together ever since then and had had children. His lordship held that the presumption in favour of validity ought to prevail, as there was no cogent evidence against it.

In *London County Council* v. *Ball*, on 28th April (*The Times*, 29th April), the Court of Appeal (TUCKER, EVERSHED and SINGLETON, L.JJ.) held that the London County Council were not liable to the respondent in damages for having put a boiler without a safety valve in the house which the respondent occupied as tenant of the council, with the result that the boiler burst during frosty weather. The court held that the absence of a safety valve did not put the boiler into the category of dangerous things.

In *Stuchbery and Others* v. *General Accident Fire and Life Assurance Corporation, Ltd.*, on 27th April (p. 301 of this issue), the Court of Appeal (the MASTER OF THE ROLLS, and ASQUITH and DENNING, L.JJ.) held that no goodwill attached to offices where a solicitor carried on both his profession and business activities, and that, therefore, the solicitor could not claim a new lease under s. 5 of the Landlord and Tenant Act, 1927.

In *Executors of Walter Sampson, deceased* v. *Nottinghamshire County Council*, on 29th April (*The Times*, 30th April), a Divisional Court (the LORD CHIEF JUSTICE and BIRKETT and LYNSKEY, L.JJ.) held that compensation for compulsory acquisition in May, 1947, by the respondent council for its statutory purposes of land, the value of which for its existing agricultural use on 7th June, 1947, was £17, could not exceed £17, notwithstanding that it had substantial potential value in excess of that figure as a building site. The court held that where notice to treat was served after the passing of the Town and Country Planning Act, 1947, but before the appointed day, as in the case before the court, the value of the land had to be assessed by reference to prices current immediately before 7th January, 1947 (s. 55), and on the assumption that no development would be permitted (s. 55 (3)).

COUNTY COURT PROCEDURE—II

(*Continued from p. 277, ante*)

Hearing

It is recommended that the jurisdiction and powers of the registrar should be extended. He should be empowered—

(1) subject to the judge's leave and if neither party objects by notice within a specified time, to try cases where the amount claimed or involved does not exceed £20, and "a further increase [in that figure] might well be made as soon as there has been time for the public to manifest its confidence in the extended jurisdiction";

(2) to try and determine *any* action or matter within the limits of the court's jurisdiction by leave of the judge and with the consent of the parties, and so that there should be a clear right of appeal to the judge from the registrar's decision;

(3) to make orders for payment out of funds in court without restriction, and not merely, as at present, in an emergency because of the judge's absence;

(4) to approve settlements in cases where an infant or person of unsound mind is a party (Ord. V, r. 19);

(5) to make administration orders under the Administration Order Rules, 1936; and

(6) to hold a "registrar's court" under s. 37 of the County Courts Act, 1934, whenever he himself thinks it advisable.

The Committee thinks that the terms of Ord. XXIII, r. 1 (1), should be amended, so far as necessary, to make it clear that the registrar has power (about which doubts have been expressed) to deal with claims for the return of goods where the value, or the unpaid balance of the hire-purchase price, does not exceed £10; and that this latter figure should be increased to £20 in line with the proposed general increase in the registrar's jurisdiction.

The Committee makes further recommendations to eliminate alleged delay and congestion in regard to the hearing of cases: in particular, that there should be power to appoint more than one deputy judge at a time, that the Lord Chancellor should have power to appoint deputy judges without restriction as to numbers, and that the existing limitation as regards the number of judges should be removed.

A matter of local interest arises in reference to London courts, involving the suggestion of a central county court and the reorganisation of existing court districts in the London area, both conditioned as respects the possibility of providing new court buildings, or repairing, altering or rebuilding the existing ones.

One of the major reforms proposed by the Committee is that a party's solicitor should be allowed to be represented at the hearing of a case by another solicitor, acting as advocate: in short, that solicitors may "brief" solicitors to act on agency terms on the hearing of cases. This position can be reached formally at present only by means of a notice of change of solicitors, filed and served on the other side prior to the hearing, and sometimes necessarily repeated by the restoration of the original solicitors, to have charge of the proceedings following the conclusion of the hearing and, possibly, the taxation of costs. Quite often the giving of such notice is omitted and the court's indulgence relied upon, particularly on the hearing at a court distant from the practitioner's office of uncontested ordinary and default actions, the disposal of default actions, and the hearing of judgment summonses. The Committee recommend that this practice should be recognised, without the necessity for giving a notice of change, which procedure should be abolished.

A suggestion by the Solicitors' Managing Clerks' Association that solicitors' managing clerks should have a right of audience before the registrar, in court or in chambers, was not accepted by the Committee. It is agreed, as is probably the general present practice, that a solicitor's clerk may appear before both the judge and the registrar in chambers. But the Committee do not recommend that clerks should be entitled "as of right" to conduct proceedings in open court. They may no doubt continue to be allowed to do so, in suitable circumstances, by leave of the registrar.

The Committee also declined to recommend any amendment in s. 86 (*d*) of the County Courts Act, 1934, so as to allow an officer or employee of a limited company to appear as of right and conduct a case on behalf of the company. This should only be done with the leave of the court.

The Committee reports that "there was general agreement among witnesses that it is not desirable that county court proceedings should be more informal than they are at present," so that there should not be any change in the general method of conducting cases in the courts. The opportunity for all litigants to secure adequate legal representation under the proposed new legal aid and advice system will off-set any disadvantage experienced by litigants appearing in person by reason of their unfamiliarity with the procedure and some possible sense of awe and wonder.

Two minor matters dealt with by the Committee concern cases where there is a counter-claim which succeeds, and hire-purchase cases where an order for specific delivery is suspended on payment of the unpaid balance of the hire-purchase price by instalments. In the former matter it is suggested that Ord. XXIII, r. 9, should be amended so that the court can give a separate judgment on both claim and counter-claim and order a set-off one against the other whether the balance is in favour of the plaintiff or the defendant, and not only of the defendant as at present. As a corollary, the discretionary power over costs must be maintained. In the hire-purchase case the recommendation is that the provisions of Ord. XXV, r. 68, should be amended to remove the requirement as to the issue and service personally on the defendant of an indorsed copy order under the Hire-Purchase Act, 1938, s. 12 (4) (*b*), unless the plaintiff so requests.

Enforcement of Judgments

One of the most significant of the Committee's proposals is that s. 1 (1) of the Courts (Emergency Powers) Act, 1943, should cease to apply to county court judgments. It is said that the procedure under the Act "has no practical value and causes delay and expense," particularly in view of the court's existing powers to make instalment orders, and to suspend or stay any judgment, order or execution, if it thinks fit, whatever may be the cause of the defendant's inability to pay. This recommendation will have the full support of every county court practitioner.

An important part of the Committee's work was to consider the way in which, if at all, the costs of litigation can be reduced. One of the controversial matters in this field for some time has been the concurrent jurisdiction and procedure of the High Court and county courts in regard to claims between £20 and £200 (formerly £100), particularly in debt-collecting cases. In general, practitioners have tended to think that a plaintiff's interests are best served by the institution of proceedings in the High Court, on the view that there are advantages in (i) the possibly swifter service of process, (ii) the impossibility of the defendant securing time to pay under an instalment order, (iii) the Ord. XIV (R.S.C.) procedure in face of delaying tactics represented by a purely formal appearance, and (iv) perhaps most of all, the more vigorous methods adopted in the execution of writs of *fi. fa.* by sheriff's officers as compared with the work of the county court bailiffs. It must be remarked that this opinion has not been universally held. It clearly became a matter for consideration by the Committee whether plaintiffs should not be forced, by the costs mechanism, to institute proceedings in the county court rather than the High Court up to a higher figure than the present £20. Equally clearly, it was necessary to be fairly sure that county court procedure—and particularly the work of bailiffs in respect of warrants of execution—would provide a proper and adequate remedy for the recovery of claims by plaintiffs, many of which would relate to

undisputed debts, and not, as might be feared, facilitate defendants evading their just liabilities for an undue length of time, or completely. The Committee appears to assent to the view that there might be some justification for complaints about delay in the execution of warrants. They think that this is " in the main to be attributed to the insufficient number of bailiffs and the difficulty of giving immediate and effective attention to every warrant." By reason of a recommendation about the service of ordinary summonses, previously mentioned, the bailiffs may be relieved of a considerable amount of work, and thus deal more expeditiously with their other duties, possibly to be facilitated by the provision of motor transport. The view is expressed that the prompt execution of warrants is of such importance that it merits the personal supervision of the registrar. Taking the general view that execution in the county court may not be so expeditious, but is on the whole as effective, as execution in the High Court, it is proposed that s. 47 (4) of the County Courts Act, 1934, should be repealed, or amended so that the figure of £20 now appearing therein shall become at least £75. This would, in substance, have the effect of inducing plaintiffs to take proceedings in county courts instead of the High Court where the claim did not exceed the revised sum mentioned.

It is considered that the provisions of s. 121 of the County Courts Act, 1934, should be amended. In view of present-day values, the exemption as respects the wearing apparel, bedding, tools, etc., of a debtor should be raised from £5 to £15.

A suggestion that the registration of judgments under s. 98 of the County Courts Act, 1934, should be discontinued is not accepted by the Committee.

Another matter of major interest which came under review by the Committee was the questioned efficacy of judgment summons proceedings. In a large number of cases the only hope of effective progress in the remedy provided for under s. 5 of the Debtors Act, 1869, is in enforcing the actual personal attendance before the judge of the judgment debtor so that he can be examined as to his means. The machinery for this purpose is not satisfactory. There are a large number of cases where no particular difficulty is encountered, but greater resource is required to deal effectively with the obstructive and contumacious debtor skilled in evasion and delaying tactics.

The normal method adopted at present is for the judgment creditor to pay conduct money to the debtor on the service of the judgment summons, on the footing that, in addition to its primary function, it then becomes equivalent to a witness summons, pursuant to Ord. XXV, r. 43. If the debtor fails to attend on the appointed hearing he may be fined by the judge under s. 81 of the County Courts Act, 1934. The judge, instead of immediately imposing a fine, may give the debtor the opportunity of explaining his absence, in which case notice is given to the debtor to show cause on an adjourned hearing why he should not be fined (Ord. XXXIV, r. 6). If the debtor still fails to attend, the only sanction is the power of imposing a fine under s. 81 ; and the Committee rightly says that this is not satisfactory, since it affords no benefit to the judgment creditor on whose behalf the proceedings were instituted. Apart from this, the Committee finds that the methods of enforcing payment of the fine are themselves ineffective, and indeed produce " paradoxical " results. One of the alternatives provided for by s. 169 of the County Courts Act, 1934, is execution against the debtor's goods, but this can seldom be " of any practical use since the judgment creditor would not have issued the judgment summons if the debtor had had any assets which could have been reached by execution." The second alternative, imprisonment, is largely illusory, since it calls for an inquiry into the debtor's means which is the very purpose for which the judgment summons was issued and which it has failed to achieve. Legislation would be required to cure this defect.

The Committee, however, suggests that the judgment summons should, instead of being treated also as a witness summons, be allied to an order for oral examination of the debtor under Ord. XXV, r. 2. A proposed new form of *præcipe* for judgment summons (Form 170), includes an application for such an order. If the debtor duly attends, the oral examination and judgment summons will be dealt with together. If he fails, they will both be adjourned and notice (Form 194) served on the debtor to show cause why he should not be attached (Ord. XXV, r. 68 (2)). If the debtor fails to attend the adjourned hearing and to give a satisfactory explanation of his earlier default, an order for attachment can be made, and, if necessary, enforced by imprisonment. It is rightly suggested that this method will satisfactorily dispose of most of the difficult cases, but it still has one defect. The ultimate sanction is the imprisonment of the debtor until he has purged his contempt. The Committee thinks this is unsatisfactory, and proposes legislation to provide that the debtor may be apprehended and actually brought before the court to undergo examination on the adjourned hearing of the summons, and does not refer to the possibility that any debtor whose chronic contumacy called for extreme action might " stand mute " at the examination, on possible pain of being committed to prison indefinitely. This is, perhaps, so rarely to be expected that the situation does not merit the invention of further measures of enforcement.

The Committee points out that if the procedure described above is to be completely effective, Ord. XXV, r. 2, may require amendment. At present it relates only to county court judgments and would not apply, for example, to a High Court judgment on which it was desired to issue a judgment summons. But this may not be necessary, since it is normally to be expected that a new order would be sought and made in the county court, because the hope of securing a committal order on the first judgment summons after transfer is ordinarily remote. The Committee does not appear to mention the point, but it might be desirable to provide for new orders to be made on judgments of other courts following transfer, on the *ex parte* procedure available under Ord. XXIV, r. 17.

It is further recommended that the successive judgment summons procedure should be modified. The duration of the summons should be extended from three to six months, and in that period any number of successive summonses may be issued. As in the case of ordinary summonses, no fee should be payable on the first successive summons, but subsequent issues should be subject to the payment of a fee.

The Committee does not hesitate to say that judgment summonses should continue to require personal service upon the judgment debtor, and suggests no modification. It will be recalled that service by substituted means is not possible (Ord. VIII, r. 6).

It is considered that the question of costs in respect of a judgment summons is obscure, and the Committee recommends clarification. In the opinion of the Committee the judge should be entitled to award costs, whether a committal order is made or not, where (*a*) means to pay are proved, (*b*) the judgment summons is issued on the judgment of another county court, or (*c*) it is issued on the judgment of a court other than a county court. The costs may include solicitor's charges, and counsel's fee if the judge so certifies.

Finally, the Committee expresses the view that the jurisdiction of county courts under s. 5 of the Debtors Act, 1869, should continue to be exercised only by the judge, and that the registrar should therefore not be empowered to hear judgment summonses.

G. M. B.

(*To be concluded.*)

Mr. J. A. BRIGGS, of Rochdale, has been appointed a solicitor on the staff of the Town Clerk of the City of Bristol.

Mr. STEPHEN RHODES, LL.B., senior assistant solicitor to Norfolk County Council, has been appointed assistant secretary of the County Councils Association.

The Colonial office announces the following appointments: Mr. H. M. W. AUBREY, Puisne Judge, Gold Coast; Mr. D. E. JACKSON, Puisne Judge, Windward and Leeward Islands; Mr. E. B. SIMMONS, Attorney-General, Seychelles; Mr. N. L. COHEN, Federal Counsel, Federation of Malaya; Mr. L. A. MASSIE, Legal Officer, Federation of Malaya.

DEVELOPMENT AND DEVELOPMENT CHARGE—II

Exemption from charge

In the first part of this article (*ante*, p. 259) the two main tests of liability to development charge were referred to, namely :—

(*a*) Is planning permission required for the development ? and

(*b*) If it is required, is the development exempted from charge by any of the various exemptions ?

and it was pointed out that while (*a*) was primarily a matter for the local planning authority the Board were masters in their own house in respect of (*b*). It is, therefore, particularly important to study the Board's interpretations as set out in their Practice Notes No. 1 of some of the exemptions of interest to the reader in general practice.

These exemptions were referred to in an article at 92 SOL. J. 329, and the ones first mentioned there were the special case provisions in Pt. VIII of the Town and Country Planning Act, 1947, e.g., s. 78 (Unfinished buildings) or s. 80 (Ripe land). An owner may be entitled to exemption under s. 78 or s. 80 in respect of a particular building, but his plans may change and he may wish to complete or put up the building to a larger or different plan. In these cases the Notes state (paras. 25 and 26) that the development charge will represent the difference between the development value of the building entitled to exemption and the development value of the building as finally completed or put up. In other words, credit will be given for the value of the exemption.

The second main head of exemptions covers those in Sched. III to the Act. The word "building" occurs in a number of places in this Schedule, but notably in—

(*a*) paragraph 1, which exempts the rebuilding of any building in existence on 1st July, 1948, or destroyed or demolished since the 7th January, 1937, provided the cubic content is not increased by more than one-tenth or, in the case of a dwelling-house, one-tenth or 1,750 cubic feet, whichever is the greater ; and

(*b*) paragraph 3, which exempts the enlargement, improvement or other alteration of any building mentioned in para. 1, or any building substituted therefor as mentioned in para. 1, provided that the cubic content is not increased more than is mentioned in para. 1.

The Board construe "building" as meaning the singular only and regard a pair of semi-detached houses as two buildings (Notes, para 14). Therefore it is not permissible, if such a pair belong to one owner, for him to add the whole additional permitted cubic content for the two houses to one only or to demolish two semi-detached cottages and rebuild them as a single detached house without in either case becoming liable to charge. This construction is, however, subject to s. 112 (2) of the Act, whereby, for the purposes of Sched. III, para. 3, in the case of any institution or undertaking (the Board state that a dwelling is not included in this expression) the cubic content of any two or more buildings in the same curtilage and used as one unit on 1st July, 1948, may be aggregated for the purpose of calculating the original cubic content. Thus in the case of factory buildings in the same curtilage one-tenth of the cubic content of all the buildings could be added to one. The Board will aggregate not only for enlargements under para. 3 but also for rebuilding under para. 1 of Sched. III. As mentioned, this does not apply to dwelling-houses ; in the case of these, however, s. 112 (2) permits the exempted increase in cubic content to take place by the erection of a separate building if in the same curtilage ; thus a garage within the one-tenth increase may be either built on to the house or erected separately in the curtilage.

Another result of this construction of "building" is that if one house is demolished it cannot be replaced free of charge by two houses, even though both houses together do not exceed the content of the old. Only one of the new houses will be free of charge (Notes, para. 16). This is an important consideration for anyone proposing to buy a large property for redevelopment. The original house could, of course, be converted into flats free of charge under para. 2 of Sched. III, which exempts from charge the use as two or more dwelling-houses of a dwelling-house used on 1st July, 1948 (this does not include houses erected after this date), as a single dwelling-house. The Board will also allow to be converted into separate dwelling accommodation free of charge any garage, stable, loose-box or coachhouse within the curtilage of a house *existing on 1st July*, 1948 (Notes para. 18). They could in any case be used free as additional dwelling accommodation to the main house by virtue of s. 12 (2) (*d*).

To be a rebuilding, the new building must be erected within the curtilage of the old one, though not necessarily on the same site, but the old building must be pulled down (Notes, para. 15). The new building may be varied vertically or laterally (e.g., two storeys instead of four) provided the permitted cubic capacity is not exceeded (*ibid.*, para. 16).

The third main head of exemptions is the Development Charge Exemptions Regulations, 1948 (see 92 SOL. J. 342), but the Notes contain no special interpretation of their contents, though some are, of course, affected by the matters referred to above, e.g., Class (1) extending the exemptions in paras. 1 and 3 of Sched. III to buildings erected after 1st July, 1948.

Principles for assessing development charge

By s. 70 (2) the Board, in determining development charge, are to have regard to the increase in the value of land with the benefit of a particular planning permission over its value without this, and the general principles laid down by the Development Charge Regulations, 1948, in effect require the Board to exact 100 per cent. of this increase as development charge (see 92 SOL. J. 329).

To represent the values with and without planning permission, the Board have invented two new terms, respectively "consent value" and "refusal value" (Notes, para. 35). The reader may ask why, with all the other values which have come into use with the Act, "unrestricted value," "restricted value," "development value" and "existing use value," it has been found desirable to use these new terms.

Unrestricted, restricted and development values are terms used in connection with claims under Pt. VI of the Act against the £300,000,000 fund, the third being the difference between the first two. The development value for Pt. VI will generally be the value of the most lucrative development for the land concerned: the value on which development charge is exacted is the value of the development in the development permission. Thus an owner may claim development value against the fund on the basis that land may be developed with a large block of flats. He may later wish to use it for the erection of a single dwelling-house only, and it is on the increase in value for such single dwelling-house that the development charge will be based. Apart from this substantial difference there are other distinctions between the three values for Pt. VI purposes and the increase in value for development charge purposes, e.g., the former are related to values immediately before 7th January, 1947, the latter to values at the date of the development. Unrestricted, restricted and development values are, therefore, not applicable as terms of art to the determination of development charge, though in many cases the Part VI development value may be the same, or nearly the same, as the development charge. Existing use value is a convenient and well-recognised expression and might well have been used instead of refusal value ; the latter is, however, a better contrast to the term "consent value."

Consent value is the value of the land with the benefit of the planning permission concerned. But how is it ascertained ? There has been no market in the past in development rights as distinct from land and a purchaser of land has had to pay the highest value, whatever he wants it for. A purchaser would have had to pay the same price whether he intended to put up a block of flats or a single dwelling-house.

Consent value will take the form of a market value on a sale by a willing vendor with the benefit of the particular planning permission to a willing purchaser (Notes, para. 36). Disinclination of the vendor to sell or urgent necessity of the purchaser to buy must be disregarded (para. 37). One of the objects of the power given by s. 43 of the Act to the Board to acquire land for the purpose of disposing of it for development for which planning permission has been granted on terms inclusive of development charge is to enable the Board to test this market consent value. So far as is known, the power has not yet been exercised for this object, presumably because pre-Act market values are still a sufficiently good guide. As the Notes say (para. 59), " In so far as actual past transactions in land are still a comparable guide to the fixing of consent values, the Board suggest that prices paid before the Act, where a building or buildings have been erected within a year or so after the sale, are more reliable comparable evidence (subject, of course, to variations in levels of value) than other transactions."

What of this market value, however, where there is only one purchaser in the market, either because, apart from his special needs, there is no market, e.g., where a strip of land is of little value save for the purpose of giving access to an adjoining owner's property, the latter being the only likely purchaser, or because there is in fact only one possible purchaser? The latter will happen, for example, where an owner wants to extend his buildings beyond the free limits on his own ground. An auction sale with only one bidder will not realise such a price as that at which competition is keen, though the subject-matter is the same. The Board will not exclude the special needs of the only likely purchaser, though they will disregard any urgent necessity for him to buy; nor will they assume that because there is only one possible purchaser the vendor will part with the land for nothing. " The fact is that the only possible purchaser of a potentiality is usually quite willing to pay for it " (Notes, paras. 38 and 39).

Refusal value will be calculated in the same way as consent value but without the benefit of the planning permission.

It is particularly important to note that in both consent value and refusal value no account must be taken of the probability or possibility of any operations or uses being permitted which are not permitted to the land with and without the particular planning permission respectively. A purchaser might be prepared to pay far more for a plot of land on which a house could probably be erected than for a plot on which one could certainly never be erected. It must be assumed in calculating the refusal value that a house could never be erected, thus reducing the refusal value to a quite nominal figure. In calculating the consent value it would be assumed that a house could be erected, but nothing more beyond the free extensions, thus excluding any possibility of a block of flats being put up.

The development charge is the difference between the consent value and the refusal value.

In the type of case already mentioned where there is only one available purchaser, the Board propose in most cases to make a before-and-after valuation of the whole property concerned (Notes, para. 40). Thus, in the case of a factory extension the consent value would be the value of the existing factory plus the 10 per cent. free extension plus the right to make the additional extension, while the refusal value would be the value of the existing factory plus the 10 per cent. free extension.

After dealing with the general principles of assessment of development charge, the Practice Notes proceed to discuss the charge on particular types of development. The most important points made are briefly as follows:—

Single house and garden.—Will be assessed irrespective of ownership or occupation, e.g., whether a farmhouse, service cottage or lodge, owned by an individual or a local authority. The assessment will assume that the house will be occupied with a garden of a size normal to its type and will have regard to the size and situation of the house (paras. 64–66). As readers will be aware, the charge on agricultural workers' cottages is postponed so long as they are used for this purpose (para. 71).

Private sports grounds with small buildings.—Consent value will be taken as equivalent to one-quarter of housing value (para. 78).

Schools with playing fields adjoining.—Consent value will be based on housing value of the land (para. 81).

On-licensed premises.—Will be assessed for charge in the usual way and monopoly value deducted (para. 84).

Churches and buildings for religious bodies.—Consent value will be assessed at one-quarter of housing value or, if the building is to be used primarily for public worship, at less (para. 90).

Village halls, youth clubs and similar small buildings.—Provided there is a condition in the planning permission preventing commercial use, consent value will be assessed at one-quarter of housing value (para. 92).

Building estates.—A person who desires to lay out roads and services on an estate with a view to building houses himself or selling off plots should approach the Board before carrying out any works. Then, in assessing consent value, the Board will make an allowance for the capital investment in the land which produces value in the land, including any statutory liability for road or similar charges, together with a reasonable return for profits and risk on the investment (paras. 94 and 95).

To secure this allowance the developer must undertake to pay the development charge himself; he must not require a purchaser from him to pay it, but, to recoup himself, should sell at a price inclusive of development charge under Method B of the Board's pamphlet House 1 (para. 95).

The Board will assess one development charge for a unit of development of reasonable size (para. 93). If, as is often found convenient, planning consent is obtained in two stages, first to a layout or general outline, and subsequently to detailed plans, the Board will usually be able to assess the charge at the first stage if the layout shows roads and services and the density or size of houses to be permitted (para. 110).

It will be seen from the foregoing that where an allowance is to be made for capital investment in preparatory works, application for determination of the charge must be made before the first works are started. Where, however, money was spent before 1st July, 1948, on roads, services or like improvements (including road charges) the Board may be prepared to postpone payment of the charge up to 1st July, 1953, and accept a charge on the claim against the £300,000,000 fund to secure payment. The Board will, however, only make such arrangements with a person who owned an interest in the land on 1st July, 1948, or on whom the interest has devolved by operation of law only since then. The Notes state that no promise has been made that such land will attract 100 per cent. or any other percentage under the Treasury scheme for payments for loss of development value, but that statements have been made that attention will be paid, when framing the scheme, to such expenditure (para. 139). This note seems over-cautious, for the Minister of Town and Country Planning stated that, so far as he was concerned, this kind of cost would be taken into account when the scheme was made and that in one way or another account ought to be taken of any expenditure on the land, and that nobody would wish to deprive the owner of land of any of the benefit from any expenditure he had incurred on it.

The Board's procedure in connection with development charges will be mentioned in the third part of this article.

R. N. D. H.

At The Law Society final examination held on 14th, 15th and 16th March, 475 candidates sat and 274 were successful; the Sheffield Prize has been awarded to Mr. J. S. C. Gurney-Champion, and the John Mackrell Prize to Mr. N. H. Brown. Of 393 candidates, 271 were successful at the Trust Accounts and Bookkeeping examination held on 18th March.

MATRIMONIAL PRACTICE NOTES—III

VI. RES JUDICATA AND ESTOPPEL

THE case of *Winnan* v. *Winnan* (1948), 92 SOL. J. 688, is full of illustrations of the technical twists and turns that a matrimonial case may take.

The petitioning husband complained of cruelty in the form of unjustified accusations of adultery, whereby his health was impaired and he was caused to leave home. After a period of separation he had returned to his wife, thus condoning her conduct. Soon, however, the husband was constrained to leave again, this time because of the wife's preference for the company of some twenty-five to thirty cats which she insisted on harbouring in the four-roomed matrimonial home. For some time the husband paid an allowance to the wife, but when he ceased to do so she sought and obtained a maintenance order against him. Later, three years having expired since the final parting, the husband presented a petition for divorce, alleging both cruelty, condoned but revived by constructive desertion, and also desertion for three years.

The wife did not deny the charge of cruelty, but pleaded (1) that any cruelty had been condoned, (2) that her subsequent conduct did not amount to any kind of desertion, and (3) that in any event the question of desertion was *res judicata* and that the petitioner was estopped from relying on it since the justices, in granting the maintenance order, must have decided that she was not in a state of desertion.

The Court of Appeal, confirming the decree *nisi*, held that the respondent's original conduct was correctly regarded as cruelty and that her subsequent behaviour amounted to constructive desertion. The respondent's third argument presented some difficulty and the court stated that the particular point was bare of authority, but was satisfied that the rule of *res judicata* was never intended to apply to such a case, for otherwise the jurisdiction of the Divorce Court would be impaired.

The rule is indeed a difficult one to apply in matrimonial causes, but the modern tendency is undoubtedly towards allowing complete freedom of investigation to the Divorce Court. In *Harriman* v. *Harriman* [1909] P. 123, the Court of Appeal laid down that the Divorce Court was not bound by the existence of a separation order from inquiring into the facts upon which it was made and, following that case, the President, in *Hudson* v. *Hudson* [1948] 1 All E.R. 773, rejected a plea of estoppel by a petitioner who, having obtained a separation order which had been confirmed by the Divisional Court, relied upon s. 6 of the Matrimonial Causes Act, 1937. The respondent was accordingly allowed to contest the effect of the previous order.

In *Kara* v. *Kara and Holman* (1948), 92 SOL. J. 349, the Court of Appeal reached a similar conclusion, and these last two cases were quoted with approval in *Winnan* v. *Winnan, supra*, when it was again emphasised that the Divorce Court is under a statutory duty, now expressed in s. 4 of the Matrimonial Causes Act, 1937, to inquire into the whole of the facts alleged in a petition.

What, then, is the value of any previous finding? The answer was given by the President in *Hudson* v. *Hudson, supra*, when he explained that, while there was no technical difference between the evidence provided by an order made on an undefended summons and a decree of judicial separation, affirmed, it may be, by the Court of Appeal, a judge might well feel that the latter carried more weight as evidence of the facts found by it.

On the question of the effect of a finding of innocence we are again largely indebted to recent judgments given by the President. In *James* v. *James* (1948), 92 SOL. J. 126, a husband, who had unsuccessfully petitioned for a divorce for adultery, was summoned for maintenance. The justices dismissed the summons, being apparently satisfied of the wife's adultery, but in the Divisional Court the President said that the justices were bound by the Divorce Court's finding of the wife's innocence. He thought that there might be a marked distinction between, on the one hand, a judgment (whether of a court of summary jurisdiction or of the High Court) which had found a particular offence proved and, on the other hand, a case where the High Court had dismissed the charge. The same doubt was expressed in *Hudson* v. *Hudson, supra*, and, as we have seen, in *Winnan* v. *Winnan, supra*.

The position may be summarised by saying, first, that a previous finding by any competent court that a charge is proved may be accepted as evidence of the offence in subsequent divorce proceedings, but that the Divorce Court is not absolved or estopped from inquiring fully into the facts and, secondly, that the dismissal of a charge by a court of record probably operates to bar the later consideration of the same charge by any court.

VII. CONDONATION AND REVIVAL

The law on condonation has lately undergone some clarification, and several decisions have helped to give a concrete form to those resounding but abstract expressions "Forgiveness with a full knowledge of the circumstances" and "A blotting out of the offence so as to restore the offending party to his or her former position," which are so often quoted from the old cases of *Peacock* v. *Peacock* (1858), 1 Sw. & Tr. 183, and *Keats* v. *Keats and Montezuma* (1859), 1 Sw. & Tr. 334.

In *Fearn* v. *Fearn* (1948), 92 SOL. J. 141, the petitioning husband was serving overseas when his wife wrote to him confessing her adultery. He replied with a letter of forgiveness but later changed his mind. The court emphasised that words of forgiveness alone could never amount to condonation.

In *Mackrell* v. *Mackrell* [1948] 2 All E.R. 858, the Court of Appeal selected as the best test the less well-known *dictum* from *Keats* v. *Keats and Montezuma* that "forgiveness which is to take away the husband's right to a divorce must not fall short of reconciliation," and disapproved the suggestion made in *Wilmot* v. *Wilmot and Martin* [1948] 2 All E.R. 123 that the mere continuation of a state of strained relations, although no different from that existing before the discovery of the adultery, could amount to condonation.

In *Cook* v. *Cook* [1949] 1 All E.R. 384 the husband had been living with another woman for some years, and when she left him he asked his wife to return and act as his housekeeper and be paid for her services. As there was no "resumption of conjugal cohabitation," i.e., no reconciliation to which both parties agreed and which meant their setting up a home together in their former relationship as husband and wife, the Divisional Court held that the wife had not condoned her husband's adultery. The proposition that the guilty party need not consent to being forgiven, which had been made in *Wilmot* v. *Wilmot and Martin*, was disapproved.

Apart from "*Rose* v. *Rose*" cases, referred to below, the only exception to the rule that condonation must amount to reconciliation is that one act of sexual intercourse, with full knowledge of the wife's guilt, is conclusive evidence of condonation by the husband, but that is because of the serious prejudice to the wife that may thereby be occasioned, since she might have a child (see *Fearn* v. *Fearn* and *Mackrell* v. *Mackrell, supra*).

It is now well established that a fresh matrimonial offence may be sufficient to revive condoned adultery or cruelty although not in itself sufficient to support a petition for divorce. Thus desertion, although it has not subsisted for three years (*Beard* v. *Beard* [1945] 2 All E.R. 306, *Kafton* v. *Kafton* (1948), 92 SOL. J. 154), or is brought to an end by an offer to return (*Lloyd* v. *Lloyd and Hill* [1947] P. 89), will revive a condoned offence, and so will adultery which is only disclosed by the respondent's prayer for discretion in his answer or cross-petition (*Wilmot* v. *Wilmot and Martin, supra*). It may be that disobedience to an order for restitution of conjugal rights would also do so, although that is no longer "statutory" desertion (see *Price* v. *Price* [1911] P. 201).

Condonation is not, however, cancelled by conduct falling short of a recognised matrimonial offence. Thus, where condonation is brought about by a wife's promise not to

associate with the adulterer, and sexual relations are resumed between the spouses, but the wife later says that she intends to resume her former association, there is no revival merely by the withdrawal of her promise (*Henderson* v. *Henderson* [1944] A.C. 49) and the position is the same where the wife is the petitioner (*Winchcombe* v. *Winchcombe* (1946), 90 SOL. J. 283).

However, the question what is a recognised matrimonial offence is not always an easy one, as the case of *Winnan* v. *Winnan, supra*, shows. At first sight the keeping of a large number of cats does not seem to fall into that category, but it was nevertheless the chief constituent in the wife's offence of constructive desertion.

A co-respondent is in a rather vulnerable position when condoned adultery is revived, for the revival operates against him also and may render him liable for the whole costs of the petition, even though the reviving offence be one, e.g., desertion or cruelty, in which he had no part (*Barnes* v. *Barnes* (*Ayres cited*) (1947), 177 L.T. 469).

Finally, the "*Rose* v. *Rose*" clause must be mentioned. This clause in a separation deed provides that no proceedings shall be taken by either party in respect of any cause of complaint which arose before the date of the deed and that any previous offence shall be considered as condoned and shall not be pleaded or admissible in evidence in any proceedings between the parties. Such a deed is effective, not only to condone any previous offence, but also to prevent any such offence being revived by subsequent conduct (see *Rose* v. *Rose* (1883), 8 P.D. 98 and *L.* v. *L.* [1931] P. 63).

E. T. E. M.

A Conveyancer's Diary

BEQUESTS TO A PARISH CHURCH

IT would seem to be the easiest thing in the world to draw a bequest in favour of the incumbent of a parish church in such terms as to make it clear that the legacy is to be used for charitable purposes; and so it is, provided that the danger of embellishing the bequest with unnecessary directions is realised. But a gift of this kind, if it is framed in anything except the simplest language, is liable to be scrutinised against the background of some of the finest distinctions which even the English law relating to the construction of charitable gifts contains, and that is a formidable thought. Unfortunately the simple piety which now and then impels a testator to leave a hundred or two to his parish church is seldom matched by any precise appreciation of such distinctions, which he would probably (and very likely rightly) regard as so much mumbo-jumbo, with the result that these small gifts are often phrased with insufficient care, even when they appear in a will prepared with professional assistance: it is hard work trying to explain to a layman why one of several forms, all superficially alike to his untutored mind, must be chosen and the others rejected, when the rejected form appears the better to express exactly what the testator wants his reverend friend to do with the money when he is gone.

But now and then the testator's mind is sufficiently pliant to accept the form his adviser puts before him, and in such a case it should not be difficult to frame the legacy in suitable terms. What terms are suitable will, I hope, emerge with sufficient clarity from the specimen bequests which appear below and the notes of caution or explanation I have appended to them.

(1) "I leave the following legacies namely £100 to the vicar and churchwardens of St. George's Bloomsbury . . ."

This is apparently a good charitable bequest for the ecclesiastical purposes of the parish (see, e.g., *Farley* v. *Westminster Bank, Ltd.* [1939] A.C. 430, at p. 434). A similar construction would probably be given to a gift in these terms to the vicar only, provided that there were nothing in the will to indicate that the vicar was to take the gift not *virtute officii* but beneficially. In the case of a small legacy, especially where the testator has discussed his intention with the incumbent, there would probably be no real difficulty whether the form is such as to make the legatee, on a strict view, beneficially entitled or entitled merely as a charitable trustee, apart from the concession which charitable legacies at present enjoy for legacy duty purposes; and this concession will soon lose its importance with the impending abolition of the duty.

(2) "£100 to the vicar [and churchwardens] for the time being of St. George's Bloomsbury . . ."

This is an equally good form, whether the words in brackets are inserted or not, and has the advantage that, unlike that in (1), it cannot possibly be construed as a gift except *virtute officii*; see, e.g., *Re Eastes* [1948] Ch. 257, where the authorities are conveniently reviewed. It would appear, however (*ibid.*, p. 260), that the precise mode of application of a legacy in these terms may possibly have to be settled by a scheme, a course which is not only cumbrous and dilatory but which would be likely to offend the testator's desires, were he alive to express them, since he would probably wish nothing better than to leave the details of administration to the incumbent (with or without his churchwardens to assist him).

(3) There is, therefore, something to be said for the form upheld in *Re Garrard* [1907] 1 Ch. 382: "To the vicar and churchwardens for the time being of . . . to be applied by them in such a manner as they shall in their sole discretion think fit . . ."

No scheme was directed in this case, and it is difficult to see how, with a gift in these terms, a scheme could ever be directed which would affect the exercise of the complete discretion conferred by the testator on the donees. But it should be noted that the decision in *Re Garrard* (that a gift in these terms is a valid charitable bequest) was later questioned by Farwell, L.J. (in *Re Davidson* [1909] 1 Ch. 567, at p. 573), whose reasoning may be analysed as follows: a gift to apply at discretion would *prima facie* authorise application for non-ecclesiastical (i.e., non-charitable) objects; to cut down the generality of objects in such a case to ecclesiastical objects can only be justified as a matter of the construction of a particular will; therefore the decision in *Re Garrard* was a decision on the construction, and no general principles emerge from that case which can be applied to other cases. If this were so these criticisms would apply as well to the forms in (1) and (2) above as to that in *Re Garrard*, but in view of the words used in the passage in *Farley* v. *Westminster Bank, Ltd., supra*, to which reference has been made, it is doubtful whether *Re Garrard* would be upset to-day.

(4) "To the vicar and churchwardens for the time being of St. George's Bloomsbury to be applied by them for such charitable objects [*or* such religious objects being charitable] as they may in their absolute discretion from time to time select . . ."

This form cannot be questioned in the way that, as has been seen, that in *Re Garrard* can be questioned; it appears in no decided case (the best recommendation), and it is the form I advise should be used. It has the further advantage that it can be combined perfectly safely with the expression of some particular wish of the testator's, such as is to be found in *Re Eastes, supra*, without the danger of the particular desire in any way affecting the main charitable purpose of the gift. There is a great deal to be said for bringing this charitable intent into the foreground in view of the rule (which in spite of some attempts to put a gloss on it is still operative) that the character of the donee is not an eligible consideration in deciding the question whether a gift is a good charitable gift or not; see *Dunne* v. *Byrne* [1912] A.C. 407, *per* Lord Macnaghten, at p. 410.

(5) A final recommendation is a bequest to the Ecclesiastical Commissioners, which may often be as good a way of leaving a legacy for ecclesiastical purposes (those, of course, of the Church of England) as any other. The

Commissioners publish a booklet setting out, and explaining, the forms of bequest they recommend.

If these notes point out a few of the traps into which a draftsman treading his way through the jungle of case law on this topic may fall, they will have served their purpose. The law that necessitates an application to the court in such cases as *Re Eastes, supra*, is a disgrace, but as only the Legislature can deal with the tangle into which this branch of the law has got, we shall probably have to try and get along with it in its present state as best we can for a long time to come.

"A B C"

Landlord and Tenant Notebook

"NON-CONTRACTUAL SERVICES"

THE shortcomings of tribunals under the Furnished Houses (Rent Control) Act, 1946, have again been in the legal news, in *R.* v. *Paddington, etc., Rent Tribunal; ex parte Bell London and Provincial Properties, Ltd.* (1949), 65 T.L.R. 200 ("the proceedings at the hearing were truly remarkable"), and *R.* v. *Kingston-upon-Hull Rent Tribunal; ex parte Black, ibid.*, 210 ("there was a complete failure of justice"). If under legislation about to be passed these bodies are entrusted with the task of revising standard rents fixed since September, 1939, practitioners advising on evidence and the like will indeed have difficult tasks. It is, however, not the "muddled procedure" adopted in the two recent cases that I propose to discuss, but rather some new authority which, at the invitation of the Solicitor-General, the Divisional Court gave us in the first-mentioned case.

References made by the local authority were held to have been invalid because made without inquiry, but it appeared that when determining the rents of a number of flats in a large block the tribunal had conscientiously excluded "uncontracted services" from consideration. Thus, there were lifts for the use of tenants; refuse was collected from the flats; and a swimming pool was undoubtedly one of the attractions: but none of these things was anywhere referred to in the leases, and the tribunal did not take them into account. The reason is to be sought in a series of decisions which they mistakenly applied to the facts before them.

In *R.* v. *Hampstead and St. Pancras Furnished Houses Rent Tribunal; ex parte Ascot Lodge, Ltd.* [1947] K.B. 973, the contract referred to was a tenancy agreement of a flat in a block of such. There were, on the premises, as Lord Goddard, C.J., put it in his judgment, porters who did this, that and the other thing for the tenants. But the tenancy agreement did not oblige the lessors to provide such. So there was nothing which enabled the tenant to say, the same judgment pointed out, that the rent he was paying was in respect of services: that he might expect to get, and that it was highly probable that he would get, a certain amount of attendance, was another thing. But the Act did not apply.

A few days later judgment was delivered in *R.* v. *Paddington and St. Marylebone Rent Tribunal; ex parte Bedrock Investments, Ltd.* [1947] K.B. 984. Substantially that case was decided on the ground that, the letting being within the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, the tribunal was not entitled to reduce the rent to a figure below that of the standard rent, and on this point the decision was affirmed on appeal ((1948), 92 SOL. J. 408); but in the Divisional Court one of the arguments advanced for the applicants was that the "services" inquired into, the supply of hot water to a bathroom used by the tenant in common with others, and the supply of electricity for lighting, did not bring the contract within the Furnished Houses (Rent Control) Act, 1946, as they (the applicants) had not covenanted to supply them. The Divisional Court expressed agreement with this argument which had, it appears, been addressed to the tribunal, which had then decided that there was an implied covenant to supply the hot water and electricity. The Divisional Court held that there was no ground for this implication.

Seeking to take this lesson to heart, the same tribunal, when determining the rents in the recent case, did not allow for the uncovenanted services as they would have wished to, and in response to the invitation referred to the learned Lord Chief Justice pointed out how they had misunderstood the earlier decisions. Those decisions concerned the question whether or not a tribunal had any jurisdiction, and not the question what was to be taken into account when considering the reasonableness of rent. If there was jurisdiction "the tribunal . . . must take into account the services and amenities which the landlord in fact is supplying and the tenant enjoying, and which there is every reason to suppose will be continued, as obviously a tenant would be willing to pay a higher rent with the amenities and services than without them, and it is just that he should." But "if the premises are let furnished or unfurnished, but the landlord contracts to supply certain services, and does, in fact, supply, though without obligation to do so, other services or amenities, in either of those cases, if the landlord ceases for whatever reason to continue the supply of all or any of what I may call the non-contractual services, the tribunal can reduce the rent to what would be fair with the contractual services plus such non-contractual services as he may continue to render, because, though the landlord commits no breach of contract, the tenant has a less valuable holding, and one for which a lower rent would be appropriate."

The "non-contractual services" in this case were "lifts, refuse collection, and a swimming pool" and while no doubt in the case of the pool a certain amount of maintenance would be necessary it would certainly be arguable that, unless the words of the "parcels" or some other words in the tenancy agreement expressed a contrary intention, the tenant would have a right to swim in that pool as an easement or quasi-easement included by the Law of Property Act, 1925, s. 62. At all events, this should be the case if such right was, at the time when the agreement was made, enjoyed with or reputed or known as appurtenant to the flat. But this would not apply to the provision of staff to work the lifts, collect refuse, or do this, that and the other thing for the tenant.

It is true that in one case which followed the decision in *R.* v. *Paddington and St. Marylebone Rent Tribunal; ex parte Bedrock Investments, Ltd.*, a tenant who complained that when he was shown his flat before taking it the hot-water system was working and there was a notice on the premises relating to it and to central heating, and that he would not have taken the flat at the agreed rent unless he had felt sure that hot water and central heating would be supplied, succeeded in obtaining a minority judgment in his favour when, the tribunal having reduced the rent, the landlords obtained an order of certiorari because these services were uncontracted. That was in *R.* v. *Croydon and District Rent Tribunal; ex parte Langford Property Co., Ltd.* (1947), 91 SOL. J. 435, but the minority judgment, that of Macnaghten, J., was not, of course, based on the Law of Property Act, 1925, s. 62, but on the proposition that where a flat was "put forward" as one with central heating and constant hot water the proper inference was that there was on the landlords an implied obligation to provide such at times when they might reasonably be required.

R. B.

Mr. W. G. Beecroft, solicitor, of Leigh-on-Sea, gave his life savings of £20,000 to erect and endow an art gallery for Southend.

Mr. W. H. Freeman, solicitor, of Harrogate, left £141,136, net personalty £138,900.

Mr. A. E. Bowen, solicitor, of Gwent, for many years clerk to Pontypool magistrates, left £17,263.

Mr. F. W. Paterson, solicitor and bank manager, of Kilwinning and Hon. Sheriff-Substitute for Ayrshire, left £48,666.

HERE AND THERE

A DOUBLE LOSS

THE Easter Term has opened with mourning for an event quite unprecedented in legal history, the death of two Law Lords within three days of each other. Both were in full activity. Neither had attained his three score years and ten and so, as one reckons age among the evergreen sages of the law, both were young, since both seemed to enjoy the promise of a long and fruitful expectation of life. Thus, with diminished forces, their remaining brethren resume their places in the line where the battle of the nationalisation of the Australian banks is being fought in the Judicial Committee. The costs continue to mount in the tens of thousands and the wordage is already well past the half-million mark. In such a case they will miss the swift common sense of Lord Uthwatt with his Australian birth and early background and, behind that (rather unexpectedly in one so unconventional), his family's five centuries of county tradition in Buckinghamshire. Where Lord Uthwatt was forthright, Lord du Parcq was gentle. He too will be missed, alike for his charm and his learning. He was well suited to sit in the Judicial Committee, for neither by birth nor by descent was he English. He was born at St. Helier in Jersey and could trace his ancestry back to one Barnabé du Parc and Colette his wife, Bretons who settled at Grouville in the island in the 15th century. One happy reminiscence of him in his days at the Bar and on the Western Circuit, so as not to close on a note of melancholy. Swift, J., came as a guest to the circuit mess and, forgetting he was not on his own Northern Circuit, remained seated during the Latin grace. When he realised his slip he asked du Parcq: "Will the Almighty be vexed?" "No, judge," came the reply, "He'll think you don't know Latin." Next day a medical witness was referring to "pachymeningitis haemorrhagica" when Swift checked him: "Ah! here's Mr. du Parcq coming to court. He'll be able to tell us what that means, he understands Latin." But du Parcq (at Oxford he took a first-class in Classical Moderations) had caught the derivation of the expression. "I'm afraid, my lord, it's Greek to me," he said.

LEARNED IN THE LAW

THE seventeen gentlemen and two ladies lately appointed by His Majesty to be his counsel learned in the law opened the term with their ceremonial perambulation of the Royal Courts of Justice. None, I believe, has ever experimented with a pedometer on this occasion, but the marches and counter-marches, the bowing here and the bowing there, must in the aggregate be the equivalent of at least one round of golf. From the feminine point of view we have now caught up with our Irish and Scottish neighbours. It was Miss Moran in Ireland who was the first lady to take silk, while in Scotland there prevails, or till but recently prevailed, the truly remarkable situation that one hundred per cent. of the ladies admitted advocates had attained the rank of leader (or senior, as they say in Edinburgh), to wit, Miss Margaret Kidd. In another respect a record, for modern times, has been equalled, though not broken. In taking silk at thirty-four Miss Rose Heilbron has done as well as Evershed, L.J., and Sir David Maxwell Fyfe, K.C., and better than Lord Simon (thirty-five) and Lord Birkenhead (thirty-six). The all-time record, however, is still held by Francis North, Lord Guilford, who took silk at thirty-one, but that was in good King Charles II's golden days. The number of King's Counsel in the 1948 Law List was (to the best of my knowledge, information and belief) 289, so, allowing for casualties in the course of the year, the nineteen neophytes will just about bring the number to the 300 where it has remained steady for some years. At the end of the 18th century there were barely more than a dozen. By the middle of the nineteenth there were twenty-eight. The Judicature Act and the decline and fall of the Serjeants brought the Q.C.'s up to 200 in the eighties and by Edwardian times the Silks mustered 270. Of the modern 300 not all, of course, are plying for hire. Some are Judges of County Courts, others Official Referees. Others again, having laboured not in vain in the days when the tax collector's toll still left a residue that thrift could lay by, can enjoy leisure with such dignity as the times permit.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Separation Order on ground of Adultery: Position of Third Party

Sir,—A solicitor friend of mine has raised an interesting point in connection with the operation of the Summary Jurisdiction (Married Women) Act, 1895, as amended by the Matrimonial Causes Act, 1937, s. 11. It will be remembered that, under the Act of 1937, magistrates' courts are given power to grant a separation between husband and wife on the ground of the husband's adultery. No neglect or cruelty is necessary, just the plain act of adultery is sufficient.

The objection taken at the court was that the co-respondent, i.e., the third party, has no right to appear by solicitor or counsel, or, indeed, to be heard on her own behalf at all, the short point being that the summary jurisdiction relating to disputes between husband and wife only provided for the issue of a summons against a named person and there is no procedure to join a co-respondent in the action. Strong exception was taken to this view, but on examination of the existing state of the law, it does seem that the Legislature has failed to make the co-respondent's position clear. My own view is that on a Case Stated the High Court would instruct the magistrates as an act of natural justice to permit the co-respondent to attend by solicitor or counsel to defend herself against allegations made against her.

Perhaps some of your readers have met the point before and can give some assistance.

DONALD B. WARD.

London, S.W.14.

BOOKS RECEIVED

Company Law. By H. GOITEIN, LL.D., of Gray's Inn, Barrister-at-Law. Second Edition. 1949. pp. xxiv and (with Index) 492. London: Sir Isaac Pitman & Sons, Ltd. 15s. net.

Wills. By R. W. HOLLAND, O.B.E., M.A., M.Sc., LL.D., of the Middle Temple, Barrister-at-Law. Fifth Edition. 1948. pp. (with Index) 119. London: Sir Isaac Pitman & Sons, Ltd. 6s. net.

The Natzweiler Trial. War Crimes Trials Series, Vol. 5. Edited by ANTHONY M. WEBB, M.A.(Oxon), F.R.S.A., Barrister-at-Law. With a Foreword by Sir HARTLEY SHAWCROSS, K.C., M.P., Attorney-General. 1949. pp. (with Index) 233. London: William Hodge & Co., Ltd. 18s. net.

For the Defence. The life of Thomas Erskine, 1750–1823. By LLOYD PAUL STRYKER. 1949. pp. xi and (with Index) 624. London: Staples Press, Ltd. 21s. net.

Jus Gentium. Vol. 1, No. 1. 1949. Copenhagen: Einar Munksgaard.

The Law Quarterly Review. Vol. 65, No. 258. April, 1949. London: Stevens & Sons, Ltd. 7s. 6d. net.

The Gas Act, 1948. Reprinted from Butterworth's Annotated Legislation Service. By LESLIE F. STEMP, B.A., LL.B., of the Middle Temple, Barrister-at-Law, Legal Officer of the Gas Council, and R. A. WING, B.A., LL.B. 1949. pp. vi and (with Index) 265. London: Butterworth & Co. (Publishers), Ltd. 21s. net.

Mr. Peter Frank Bennett, solicitor, of Wrington, Somerset, was married recently at Wellington to Miss Nancy Elizabeth Gregory, of Robinhill, Wellington.

Alderman T. I. Clough, solicitor, of Bradford, was installed President of Bradford Y.M.C.A. on 26th April.

The United Kingdom and Argentine Governments have concluded a reciprocal agreement for the relief of double taxation of profits derived from the business of shipping and air transport. The text of the agreement will be published shortly.

NOTES OF CASES

COURT OF APPEAL

WORKMEN'S COMPENSATION: SAND A "SILICEOUS MATERIAL"

Ore *v.* Izons & Co., Ltd.

Bucknill, Cohen and Denning, L.JJ.
11th March, 1949

Appeal from West Bromwich County Court.

The appellant workman contracted silicosis as a result of his work as a moulder of iron castings in an iron foundry. In order to make moulds he had to use parting powder, which he put into the moulding box with green sand and sea sand. He gave evidence that the process involved contact with fumes and visible particles in the air, and that they caused him to cough. In November, 1946, some two years before the workman's application for compensation, the employers changed the kind of parting powder used. On objection by their counsel, the workman was stopped from giving evidence of the explanation which the foreman had given for the change. The workman was not cross-examined, and the employers called no evidence. By art. 2 of the Various Industries (Silicosis) Scheme, 1931, as amended by the Various Industries (Silicosis) Amendment Scheme, 1946, S.R. & O., 1946, No. 102, which amended Scheme, by art. 4, applies to workmen employed in the specified processes after 1st February, 1946: "This Scheme shall apply to all workmen employed . . . in any of the following processes . . . foundries and metalworks . . . (*d*) moulding of iron castings with use of siliceous materials as a facing powder or parting powder." The county court judge found that the time when the disease was contracted was uncertain, and he was not satisfied that on or after 1st February, 1946, the workman used siliceous material as a parting powder or, consequently, that he was at any time employed in a process specified in the amended Scheme. The workman appealed.

BUCKNILL, L.J., said that the workman was engaged in process (*d*) after 1st February, 1946, because he made use of sand in the parting process and sand was a siliceous material within the meaning of the Scheme of 1946, having regard to the reference in process (*b*) of art. 2 to "sand or other siliceous material." As his disease had been found to be due to his work, he was accordingly entitled to compensation.

COHEN, L.J., said that the county court judge, in saying that "the onus rested on the workman throughout," was misunderstanding *Collins* v. *Vickers-Armstrongs, Ltd.* (1947), 40 B.W.C.C. 87. The workman having established that the silicosis was contracted in the course of his employment and that, at least until the change of parting powder, he was using a parting powder with siliceous material, the onus shifted to the employers of proving that the workman was not using siliceous material after 1st February, 1946.

DENNING, L.J., agreed. Appeal allowed.

APPEARANCES: *Beney*, K.C., and *E. James* (*Dennes & Co.*, for *Harvey, Mabey & Walker*, Birmingham); *I. Sunderland* (*E. P. Rugg & Co.*, for *Buller, Jeffries & Kenshole*, Birmingham).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SOLICITORS: APPLICATION FOR NEW LEASE

Stuchbery and Others *v.* General Accident Fire and Life Assurance Corporation, Ltd.

Lord Greene, M.R., Asquith and Denning, L.JJ. 27th April, 1949

Appeal from Windsor County Court.

The respondents, a firm of solicitors, applied under s. 5 of the Landlord and Tenant Act, 1927, for a new lease of the premises which they occupied at Windsor. The application was referred to a referee who reported that no goodwill had attached to the premises, although he was of opinion that the applicants did in fact carry on a trade or business there in addition to their professional activities as solicitors. The county court judge upheld the finding that a considerable amount of business, including building society and insurance business, was carried on at the premises by the applicants apart from their professional activities as solicitors. He accepted the evidence that if the applicants left the premises they would be worth more to another solicitor by reason of the tenants' activities there, and accordingly held that goodwill did attach to the premises. Having so decided, he held that the tenants were entitled to a new lease under s. 5 of the Act. The landlords appealed. Section 4 of the Act provides for payment to a tenant whose tenancy is determined of compensation for goodwill attaching to the premises by reason of a business carried on there by the tenant. Section 5 gives the tenant a right to a new lease if he establishes that the compensation to which he is entitled by s. 4 will not compensate him for the loss of goodwill. By s. 17 (3) "premises shall not be deemed to be premises used for carrying on thereat a trade or business (*a*) by reason of their being used for the purpose of carrying on thereat any profession . . ."

LORD GREENE, M.R., said that the argument for the tenants was that, even though the expression "trade or business," by virtue of s. 17 (3), did not include professional activity, yet if it were found that there was carried on on premises, as well as the professional activities, something which might be called a business, then, in ascertaining whether compensation was payable for goodwill, account might be taken of any adherent goodwill arising from the carrying on of the profession. In other words, so it was argued, once it was established that a business was being carried on on the premises, if it could be shown that goodwill attached to them, that was enough to satisfy s. 4 and so found a claim to a new lease under s. 5 even though the goodwill might in fact be referable to the carrying on of the profession. That was clearly the argument on which the county court judge had based his decision. The contrary view was that, where both a trade or business, in the statutory sense, and a profession were being carried on at premises, the only relevant goodwill for the purposes of the Act was that referable to the activities of the tenants in the trade or business to the exclusion of their professional activities. He (his lordship) could not accept the view that, once the existence of combined business and professional activities was established, the tenant was entitled to the relief given by the Act without establishing that the goodwill was referable to the trade or business alone. The only way of showing that goodwill had attached to premises by reason of the carrying on there of a trade or business was by bringing evidence on which the court could ascertain what goodwill was actually referable to that trade or business as distinct from what was referable to the profession. The profession must not be brought in for the purpose of the claim to compensation or a new lease. Therefore the county court judge's decision that there was adherent goodwill, without any attempt to find out whether that goodwill was referable to the insurance, the building society, and other activities as distinct from the solicitors' activities, could not stand. As the facts entirely failed to establish any goodwill attributable to the trade or business as distinct from the tenants' professional activities, the appeal would be allowed, and the order for a new lease reversed.

ASQUITH and DENNING, L.JJ., concurred.

APPEARANCES: *F. H. Lawton* (*Kenneth Brown, Baker, Baker*); *Duveen* (*T. W. Stuchbery & Son*, Windsor).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

WILL: CONSTRUCTION: GIFT TO CHILDREN: ADOPTED CHILDREN

***In re* Fletcher deceased; Barclays Bank, Ltd. *v.* Ewing**

Roxburgh, J. 16th March, 1949

Adjourned summons.

By a will made in the English form, the testator bequeathed his residuary estate in trust for his daughter H F E (who at all material times was domiciled in New York) "absolutely if she was living at my death, but if she be then dead, then and in that event for all and every the children or child (if only one)" of H F E. The will was made on 8th January, 1942, and there was a codicil bearing the date of 8th June, 1942. H F E was incapable of bearing children and, on that account, adopted a boy on 28th June, 1938, and a girl on 14th March, 1942. It was proved that in 1939 the testator knew of his daughter's incapacity and that throughout he referred to the two adopted children as the children of H F E and to himself as their grandfather. H F E predeceased the testator, who died on 17th March, 1943, and the court was asked to determine whether the adopted children of H F E were included in the term "children" in the will.

ROXBURGH, J., said that, upon the true construction of the will, the term "children" included the adopted children. There was no doubt that "children" in an English will *prima facie* meant legitimate children and did not include illegitimate or adopted children. As regards illegitimate children, the law was

authoritatively laid down by Lord Cairns in *Hill* v. *Crook* (1873), L.R. 6 H.L. 265, at p. 282, and Jenkins, J., in *In re Wohlgemuth ; Public Trustee* v. *Wohlgemuth* [1949] 1 Ch. 12, where it was stated that one class of cases in which the *prima facie* interpretation was departed from was when it was impossible from the circumstances of the parties that any legitimate children could take under the bequest. The principles stated there in respect of illegitimate children likewise applied to adopted children. Since it was impossible from the circumstances of the parties, which were fully known to the testator, that any legitimate children could take under the bequest, the case fell within one of the exceptions admitted to the *prima facie* interpretation of the term " children," and the adopted children were entitled to take under the will.

APPEARANCES : *Droop* (*Ager & Ager*) ; *Pascoe Hayward*, K.C., and *Wilfrid M. Hunt* (*Godden, Holme & Co.*) ; *E. Blanshard Stamp* (*Parker, Garrett & Co.*); *Maurice Berkeley* (*Simmonds, Church, Rackham & Co.*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

SMUGGLING : FORFEITURE OF SHIP

Attorney-General *v.* Hunter

Morris, J. 24th March, 1949

Information.

The defendant, who claimed to be an American subject, owned a small motor vessel, the *Taku*, of some eighteen tons. In April, 1947, she sailed from England to Cherbourg, there took on board wines and spirits, and transferred them to a landing craft at a pre-arranged point more than three miles from the English coast. The landing craft unloaded the goods at a lonely part of the coast, and the lorry conveying them inland was stopped by police and customs officers. The motor vessel set course for Le Havre but, owing to engine trouble, changed course and re-entered territorial waters, where she was seized. The Attorney-General, by these proceedings, claimed a declaration that the ship and her compass should be forfeited to the Crown. Section 169 of the Customs Consolidation Act, 1876, empowered the making of regulations, by reg. 3 of which small vessels of specified dimensions may not go beyond a prescribed distance from the coast of the United Kingdom. By s. 170 every ship " used or employed . . . contrary to the regulations . . . shall be liable to forfeiture . . ." By s. 179 " any ship found to have been within a league of the coast having had on board . . . any spirits . . . which . . . are prohibited to be imported into the United Kingdom " shall be forfeited. By s. 202 all ships made use of in the importation of, *inter alia*, uncustomed goods shall be forfeited.

MORRIS, J., said that forfeiture had been incurred under ss. 169 and 170 for breach of the regulations made under s. 169. The fact that the ship had set course for Le Havre and only returned to territorial waters because of engine trouble did not prevent the whole voyage from being one. *Att.-Gen.* v. *Schiers* (1834), 2 Cr. M. & R. 286, showed that forfeiture had been incurred under ss. 179 and 202 notwithstanding that the prohibited goods had been removed from the vessel outside territorial waters. It was impossible, on the true construction of s. 179, to limit its meaning by implying after the words " having had on board " the words " within territorial waters."

APPEARANCES: *H. L. Parker* and *John Foster* (Customs and Excise) ; *Linton Thorp*, K.C., and *Eric Myers* (*F. Myers and Son*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SALE OF GOODS : UNPAID SELLER

Gallagher *v.* Shilcock

Finnemore, J. 25th March, 1949

Action.

On 17th May, 1947, the plaintiff agreed with the agent of the defendant to buy for £665 a motor boat belonging to the latter, and paid the agent £200. The sale was " subject to survey " to be carried out at the buyer's expense. By 29th May the buyer had received a satisfactory surveyor's report. On 31st May the buyer told the seller that he was not in a position on that day to pay the balance of the purchase price, but that he proposed to raise the money by a mortgage of the ship which would have, for that purpose, to be registered. It was agreed that the agent would have the ship registered and that the buyer would thereupon pay the balance of the price after obtaining a mortgage. Finnemore, J., found as a fact that that was not a new contract of which the obtaining of a mortgage and registration of the ship was a condition. The buyer at that interview signed a document stating: " Survey on motor cruiser *Marian* (unregistered) approved . . . and I accept craft." On 13th July, 1947, a son of the seller telephoned to the plaintiff that he must pay the balance of the purchase price at once or the " deposit " would be forfeited. On 16th July the seller's solicitors wrote to the buyer to say that the ship would be sold to someone else and the " deposit " forfeited if the balance were not paid by 31st July. That letter was only received some days later because the buyer had changed his address. On 14th August the buyer himself wrote to the seller, and on 22nd August he visited the seller and stated that he was then ready to complete the purchase. The seller, however, informed him that the ship had been sold for £700 on 7th August. The buyer accordingly brought this action, claiming specific performance of the contract, alternatively damages for breach of contract, or, in the further alternative, the return of the £200. The seller contended that he was entitled to retain the £200 because the buyer had failed to perform his part of the contract.

FINNEMORE, J., said that *Howe* v. *Smith* (1884), 27 Ch. D. 89, and *Mayson* v. *Clouet* [1924] A.C. 980, showed that if a payment was a deposit and the contract were rescinded the deposit was not returnable to the payer if he was responsible for the rescission. If it was a part payment it was recoverable by the payer even though he was himself in default. The evidence showed that this was a deposit. By 22nd August, when the buyer was ready to complete, he was already in default. The property in the ship had passed to the buyer when on 31st May he signed the acceptance, subject to the rights of the unpaid seller. It followed that the claim for specific performance must fail. After 31st May two courses were open to the seller : he could have sued for the price of the boat under s. 49 of the Sale of Goods Act, 1893. It seemed beyond argument that if he had taken that course he could not have sued for the £665 and also have kept the £200 without giving credit for it. The seller's other remedy was to retain the boat and exercise the unpaid seller's lien. He had chosen here to sell. Whether the seller was entitled to keep both the sale price and the deposit depended on whether, if the unpaid seller sold to someone else, the original contract had been rescinded and the ship had vested in him again, or whether, on the other hand, the unpaid seller in selling to someone else did so in order to cease being an unpaid and become a paid seller. By s. 48 (3) of the Sale of Goods Act, which was operative here, " . . . where the unpaid seller gives notice of his intention to resell and the buyer does not within a reasonable time pay . . . the unpaid seller may resell the goods and recover from the original buyer damages for any loss occasioned by the breach of contract." Subsection (4) showed that the Act distinguished between the cases where the seller did and did not reserve a right of resale in the event of the buyer's default. The only possible inference was that, where the seller proceeded under s. 48 (3), the contract was not rescinded. Did the unpaid seller resell the goods as a person who, by rescission, had the full property in the goods re-vested in him ? Or did he sell them in the limited capacity analogous to that of a pledgee ? The question seemed never before to have been decided. Contrary to the opinion expressed in Halsbury's Laws of England, 2nd ed., vol. 29, p. 186, he (his lordship) did not think that the unpaid seller sold as absolute owner : the property had already passed here, and lateness of payment did not rescind the contract any more than did procedure under s. 48 (1) of the Act of 1893. If the seller did not resell as absolute owner then it followed that he must bring the £200 into account, for it had been paid under the contract which had never been rescinded, and the seller had enforced his remedy to obtain the contract price. Judgment for the plaintiff.

APPEARANCES : *C. G. A. Cowan* (*J. A. Ramsey & Co.*) ; *Geoffrey Howard* (*Gordon Gardiner, Carpenter & Co.*, for *Cousins and Burbidge*, Southsea).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

SCHOOL ATTENDANCE : " UNAVOIDABLE CAUSE "

Jenkins *v.* Howells

Lord Goddard, C.J., Oliver and Cassels, JJ.

7th April, 1949

Case Stated by Carmarthenshire justices.

An information was preferred by the appellant, a school attendance officer, against the respondent, Mrs. Howells, under

s. 39 of the Education Act, 1944, alleging that she was the parent of a girl of some fourteen years, who between 15th and 27th July, 1948, had failed to attend regularly at the primary school at which she was a registered pupil. The respondent was a widow. She told the school attendance officer that the child had to work at home because she (the mother) was suffering from defective eyesight. The mother had been warned twice before in respect of the child's non-attendances. She had for some years been suffering from chronic heart disease. She had been forbidden by her doctor to perform household duties. At the date of the hearing of the information she was awaiting admission to hospital for an eye operation. She had a farm of 260 acres worked by three unmarried sons. There was no one on the farm to do household duties except the mother and her daughter, and the mother had tried, without success, to obtain domestic help. It was contended for the mother that no offence had, in the circumstances, been committed. The justices held that the facts proved constituted an " unavoidable cause " within the meaning of s. 39 (2) (*a*) of the Education Act, 1944, and dismissed the charge. The attendance officer appealed. Mrs. Howells did not appear and was not represented.

LORD GODDARD, C.J., said that the child, as the only daughter of the house, had been kept at home to do the household chores while the three sons worked the farm, the mother being forbidden to take any part in the household work. It was not to be wondered at that the justices had felt very considerable sympathy with the mother. There was, however, no evidence here on which the justices could find that there was " unavoidable cause " for the child's non-attendance. The words " unavoidable cause " referred to a cause affecting the child, not other members of the family. If the court admitted as constituting " unavoidable cause " the kind of distressing facts which aroused great sympathy with the defendant in the present case it would mean that the child would never go to school at all. He did not know what arrangements this family could make, or what the effect would be on the child's health of walking a total of five miles a day to school and back, and doing domestic chores morning and evening. The case must be remitted to the justices with a direction to find the offence proved, but not with a direction to convict, for they might decide to take a certain course.

APPEARANCES: *R. G. Dow* (*Theodore Goddard & Co.*, for *W. S. Thomas*, Carmarthen); the defendant mother did not appear, and was not represented.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

SUMMARY JURISDICTION: MEASUREMENT OF FINE

Smith *v.* Lowther

Lord Goddard, C.J., Oliver and Cassels, JJ.
8th April, 1949

Case Stated by the Recorder of Hull.

The respondent, a seaman, was convicted by petty sessions of wilful disobedience contrary to s. 376 of the Merchant Shipping Act, 1894, and sentenced to fourteen days' imprisonment with hard labour. Quarter sessions, on appeal, acting under s. 4 of the Summary Jurisdiction Act, 1879, decided that, in all the circumstances, the seaman should be given the option and fined him £1, with imprisonment for fourteen days in default of payment. The Recorder was of opinion that, though a fine of £10 would have been appropriate in the circumstances, he had, under s. 5 of the Act of 1879, no power to impose a fine of more than £1. The prosecutor appealed. By s. 4 of the Act of 1879, " . . . where a court of summary jurisdiction has authority under an Act . . . other than this Act . . . to impose imprisonment for an offence punishable on summary conviction, and has not authority to impose a fine for that offence, that court . . . may, notwithstanding, . . . impose a fine not . . . being of such an amount as will subject the offender under . . . this Act, in default of payment of the fine, to any greater term of imprisonment than that to which he is liable under the Act authorising the said imprisonment." By s. 5 the period of imprisonment imposed by a court of summary jurisdiction under the Act in respect of non-payment of a fine is fixed by a scale specifying, *inter alia*, where the fine exceeds 10s. but does not exceed £1, fourteen days, and, where it exceeds £1 but does not exceed £5, one month, which, by the Interpretation Act, means one calendar month. By s. 376 of the Act of 1894, if a seaman lawfully engaged to serve in any fishing boat wilfully disobeys any lawful command during the engagement, he shall be liable to imprisonment (without the option of a fine) for not more than four weeks.

LORD GODDARD, C.J.—OLIVER and CASSELS, JJ., agreeing—said that, having regard to the words " not being of such an amount . . . " in s. 4 of the Act of 1879, the intention of the section was that the fine imposed under that Act should be measured by the term of imprisonment which the Act, under which the prosecution had been instituted, authorised. The amount of a fine and the corresponding period of imprisonment specified for it in s. 5 were to be regarded as interchangeable terms. The Recorder had accordingly rightly regarded himself as confined to imposing a fine of £1 corresponding to the period (four weeks) of less than a month's imprisonment which was the maximum under the Act of 1894. He would not have been entitled under s. 4 of the Act of 1879 to impose any fine up to £25 as long as he did not impose more than four weeks' imprisonment in default of payment, for the intention in s. 4 was not to allow justices an unfettered discretion to impose any fine up to £25, but to measure the fine as well as to restrict the imprisonment. Appeal dismissed.

APPEARANCES: *Cumming-Bruce* (*Deacons & Pritchards*, for *Andrew M. Jackson & Co.*, Hull); *Ernest Ould* (*Russell Jones and Walker*, for *Pearlman & Rosen*, Hull).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

FOOD AND DRUGS: WHOLE BOTTLE NOT SAMPLE

Leach *v.* United Dairies, Ltd.

Lord Goddard, C.J., Birkett and Lynskey, JJ. 26th April, 1949.

Case Stated by Surrey justices.

The respondent company, retailers of milk, deposited at the door of a householder a bottle of milk which appeared to be dirty and unfit for human consumption. In response to a telephone communication from the householder, the appellant, the sanitary inspector of the local authority, collected the bottle and took it to the public analyst for analysis. On a prosecution of the retailer under s. 9 (1) of the Food and Drugs Act, 1938, more than twenty-eight days later, it was contended that the justices had no jurisdiction because of the expiry of that period. The justices accepted that contention, and the prosecutor now appealed. By s. 9 (1) of the Food and Drugs Act, 1938, " A person who . . . (*b*) deposits with . . . any person for the purpose of sale . . . any food intended for, but unfit for, human consumption shall . . . be guilty of an offence." By s. 80 (1), " . . . where a sample has been procured under this Act, no prosecution shall be " instituted after twenty-eight days from the time when the sample was procured.

LORD GODDARD, C.J., said that the sanitary inspector had acted in that capacity under s. 9 of the Act of 1938 notwithstanding that he was also a sampling officer. In taking the whole bottle—the bulk—he had clearly not taken a sample. The procedure prescribed by s. 80 where a sample was taken was, therefore, not applicable. Thus the time limited for the prosecution by s. 80 (1) did not apply and the case must be remitted to the justices for determination. Appeal allowed.

APPEARANCES: *Gattie* (*Sharpe, Pritchard & Co.*, for the *Town Clerk*, Barnes); *Scott Cairns*, K.C., and *Ahern* (*Scott and Son*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SOCIETIES

The UNION SOCIETY OF LONDON, which meets in the Barristers' Refreshment Room, Lincoln's Inn, at 7.45 p.m., announces the following subjects for debate: Wednesday, 11th May, " That there is no hope of economic prosperity in this country so long as taxation remains at its present level "; Wednesday, 18th May, " That allegiance to the Crown is an essential element in the British Commonwealth "; Wednesday, 25th May, " That no further measures of nationalisation should be introduced within the next five years." The Ladies' Night Debate will be held on Wednesday, 15th June; the principal speakers will be Sir Richard Acland, M.P., and Mr. Christopher Hollis, M.P.

At the dinner of the WEST SURREY LAW SOCIETY, held on Wednesday, 27th April, the President, Mr. C. E. Shelley, protested at the establishment of tribunals of various kinds endowed with powers which put them outside the scope of the established courts. Mr. Shelley referred in particular to the ministerial inquiry and the rent tribunal. The President of The Law Society, Sir Alan Gillett, referred to the growth of the Society since its formation in 1947 and to the high esteem in which the public held lawyers to-day.

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 26th April :—

Agricultural Wages (Scotland)
Army and Air Force (Annual)
Clyde Navigation (Superannuation) Order Confirmation
Consular Conventions
Hurst Park Race Course
Juries
Wandsworth and District Gas

HOUSE OF LORDS

A. Progress of Bills

Read Second Time :—

Agricultural Marketing Bill [H.C.] [28th April.
Coal Industry Bill [H.C.] [26th April.
House of Commons (Redistribution of Seats) Bill [H.L.] [27th April.

Read Third Time :—

Consolidation of Enactments (Procedure) Bill [H.L.] [28th April.

B. Debates

Viscount Hall announced that the Governments of the other countries of the Commonwealth had recognised and accepted the decision of the Indian people to become a sovereign independent republic, and India's desire nevertheless to continue her full membership of the Commonwealth of Nations and her acceptance of the King as the symbol of the free association of its independent member-nations and as such the Head of the Commonwealth. Viscount Simon welcomed the agreement which this declaration represented and said that many important questions, constitutional and legislative, might present themselves, but he agreed that a full debate should be postponed until the Prime Ministers had reported to their respective Governments. In reply to a question by Lord Strabolgi, Viscount Hall said that the Government were at present considering whether any statutory changes were necessary in consequence of the agreement, and if that were found to be so, an announcement would be made concerning them. [28th April.

On the Third Reading of the Consolidation of Enactments (Procedure) Bill, Viscount Simon said the meaning of consolidation was that you took a bundle of existing statutes and endeavoured to reproduce in one single document their contents, without any alteration at all in the effect of the existing law. If a measure was one of pure consolidation, then, although the statute law was unsatisfactory, it would be out of order for anyone in either House to try to take the opportunity of making changes in the law. This had the disadvantage, for example, that any ambiguity or archaism in the original statute had to be repeated in the consolidating statute. A further difficulty was that, even if the draftsman reproduced word for word what had already been previously enacted, it by no means followed that the words originally used would bear the same meaning when used to-day. In the present Bill the Lord Chancellor had set on foot a greatly improved procedure. It was still consolidation, but was consolidation with a difference. What was desired was to retain the advantage that members could not amend the law but could get rid of those little ambiguities and archaisms. Lord Simon warmly congratulated the Lord Chancellor on the Bill and hoped that under it there would be from time to time a great cleaning up of the Statute Book. Lord Schuster paid a tribute to the work of the parliamentary draftsmen, and in winding up the debate, the Lord Chancellor expressed the gratitude of the House to those who served on the Joint Consolidation Committee. He did not regard the Bill as his Bill at all, it was a joint effort of all parties. [28th April.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Marriages Provisional Orders Bill [H.C.] [28th April.

To confirm certain Provisional Orders made by one of His Majesty's Principal Secretaries of State under the Marriages Validity (Provisional Orders) Acts, 1905 and 1924.

Read Second Time :—

Grimsby Corporation Bill [H.L.] [26th April.

Read Third Time :—

City of London (Various Powers) Bill [H.C.] [27th April.
Commonwealth Telegraphs Bill [H.C.] [29th April.
Milk (Special Designations) Bill [H.L.] [29th April.
Swindon Corporation Bill [H.C.] [29th April.

B. Questions

Mr. Herbert Morrison gave the names of the members of the Royal Commission on Capital Punishment under the chairmanship of Sir Ernest Gowers, G.B.E., K.C.B., as follows : Mrs. Elizabeth Cameron, C.B.E. (Elizabeth Bowen, the novelist), Mr. Norman Fox-Andrews, K.C., Miss Florence Hancock, C.B.E., Mr. William Jones, C.B.E., Mr. Horace Macdonald, Mr. John Mann, C.B.E., J.P., Sir Alexander Maxwell, G.C.B., K.B.E., Professor George Allison Montgomery, K.C., Earl Peel, Professor Leon Radzinowicz and Dr. Eliot Slater. [28th April.

Sir Stafford Cripps said that he had not yet come to a conclusion on the observations of Vaisey, J., on 16th March, in *Sebel Products, Ltd.* v. *Commissioners of Customs and Excise* [93 Sol. J. 198]. [26th April.

Mr. Bevan stated that 684 local authorities in England and Wales operate the Small Dwellings Acquisition Acts ; the total amounts advanced under these Acts and the parallel provisions in the Housing Acts between 1st January, 1919, and 31st March, 1945, was £106,973,481 ; and the rate of interest on the advances varied from time to time in accordance generally with the variation in the rate of interest on local authority loans. [26th April.

Mr. Swingler asked why the Minister of Health required local authorities in possession of undeveloped land to obtain planning consent under Circular 61 of the Ministry of Town and Country Planning where planning consent had already been obtained under the old procedure prior to the issue of the circular. Mr. Bevan replied that he had issued a circular on 11th April to housing authorities simplifying the procedure. [28th April.

Mr. Swingler asked Mr. Bevan whether, in dealing with applications for the speedy acquisition of land from rural district councils, it was his policy to refuse authorisation under s. 2 of the Acquisition of Land (Authorisation Procedure) Act, 1946, where the local authority already possessed undeveloped land in some part of its district. Mr. Bevan said it was not. His decision depended on the circumstances in each individual case. [28th April.

Sir Stafford Cripps stated that it had previously been announced that persons owning building plots on 1st July, 1948, who started to build a house for occupation by themselves or an immediate relative by 7th January, 1952, would receive a payment from the £300,000,000 equal to the development value of the plot for the erection of the house, and might have their development charge set off against that payment. It had been decided to extend the date for this arrangement from 7th January, 1952, to 1st January, 1953.

In addition, special arrangements would be made for persons who on 1st July, 1948, owned a single building plot and no other building land. If such an owner was prevented from building a house on his plot because the plot was compulsorily acquired, or a previous planning permission was revoked before 1st January, 1953, he also would be entitled to a payment from the £300,000,000 equal to the development value in the plot for the erection of one house ; and if he started to build a house on another site before 1st January, 1953, he would be entitled to have the development charge set off against the payment, in so far as it was sufficient to cover the charge.

These arrangements (a full payment from the £300,000,000 and the right to have development charge set off against it) would also apply to an owner on 1st July, 1948, of a single building plot as defined above, if he either sold the plot for immediate development and himself assumed liability for the payment of development charge, or himself built a house on the plot and sold the site and house together at a price inclusive of charge, provided in either case that the charge was determined before 1st January, 1953.

It had previously been announced that registered builders would receive a payment from the £300,000,000 equal to the development value, and might set off against it development charge meanwhile incurred, in respect of an area of land equal to that which they developed during a five-year pre-war period. It had now been decided to extend this scheme beyond registered builders, and the Central Land Board had been given a discretion to apply it to developers of housing and industrial estates (such as most housing associations and some trading estates) who could satisfy them that it was their practice to assume full practical and financial responsibility for the construction of buildings on their own land and for their sale or letting when completed. These cases would have to be dealt with by individual application to the Board. The Central Land Board was about to issue fresh pamphlets explaining the arrangements in greater detail.

The closing date for the submission of claims against the £300,000,000 was 30th June next, and Sir Stafford wished to emphasise that none of the concessions announced above could be of any effect if the owner concerned had not submitted his claim to the Central Land Board in time, since he would not then be entitled to any payment. He would also take the opportunity of emphasising that every owner on 1st July, 1948, of land which had a development value, whether or not he was likely to be affected by the arrangements just announced, should take immediate steps to ensure that his claim was submitted before it was too late. [28th April.

STATUTORY INSTRUMENTS

Gas (Allocation of Undertakings to Area Boards and Gas Council) Order, 1949. (S.I. 1949 No. 742.)

Gas (Financial Years) Regulations, 1949. (S.I. 1949 No. 743.)

Gas (Pension Scheme) Regulations, 1949. (S.I. 1949 No. 744.)

Gas (Meter) Regulations, 1949. (S.I. 1949 No. 790.)

Rules of the Supreme Court (No. 1), 1949. (S.I. 1949 No. 761 (L. 7).)
See *ante*, p. 291, as to these Rules.

Agricultural Goods and Services Scheme (England and Wales) Amending Order, 1949. (S.I. 1949 No. 763.)
This Order deals with the supply by the Minister of Agriculture and Fisheries or by a county agricultural executive committee of tubes, pipes and fittings for the supply of water to agricultural land in connection with a scheme approved by or on behalf of the Minister.

Motor Vehicles (Authorisation of Special Type) Order, 1949. (S.I. 1949 No. 769.)
This Order permits the use in and near airports of Cardox Fire Crash Tenders notwithstanding that they do not comply with the Motor Vehicles (Construction and Use) Regulations, 1947.

Control of the Cotton Industry (Revocation No. 2) Order, 1949. (S.I. 1949 No. 793.)

Packing of Explosives for Conveyance Rules, 1949. (S.I. 1949 No. 798.)

Delegation of Emergency Powers (Ministry of Commerce for Northern Ireland) Order, 1949. (S.I. 1949 No. 803.)

Air Navigation (Requisitioning in Time of Emergency) Order, 1949. (S.I. 1949 No. 758.)

Draft **Grinding of Cutlery and Edge Tools** (Amendment) Special Regulations, 1949.

Draft **Grinding of Metals** (Miscellaneous Industries) (Amendment) Special Regulations, 1949.

PARLIAMENTARY PUBLICATIONS

Report of the Committee on Police Conditions of Service under the Chairmanship of Lord Oaksey, D.S.O. (Command Papers, Session 1948–49, No. 7674.)

Statement of Guarantee given by the Treasury on 1st April, 1949, in pursuance of s. 42 (1) of the Electricity Act, 1947, on stock issued by the British Electricity Authority under the Act. (House of Commons Papers, Session 1948–49, No. 135.)

NON-PARLIAMENTARY PUBLICATIONS

First Report of the Advisory Council on Building Research and Development under the Chairmanship of Sir Harold Emmerson, K.C.B. (Ministry of Works.)

HUE AND CRY

THE news that the Ministry of Town and Country Planning, the General Post Office, the Royal Fine Art Commission and the Council for the Preservation of Rural England have all been carrying on a discussion about the colour of telephone kiosks sounds at first faintly ridiculous. If it is really necessary for all those august and unwieldy bodies to be called in to decide such a lightweight question, one feels, it will soon be impossible to swat a fly without attending several conferences on the matter: let one man decide such things.

One is inclined to forget, however, that if the decision rested with one man he would eventually be as likely as not to take the notion that what telephone kiosks really needed was a good photograph of himself, size 15 inches by 10, stuck up on the wall behind the instrument. Further, it would be an excellent innovation if every telephone caller were to begin and end his calls by pronouncing his name in ringing tones for the benefit of the secret policeman tapping the wire. That is the sort of thing that results at last from too much ridiculing of committees. There is one thing about committees: they don't photograph well, and they know it. This is bad for photographers but good for democracy.

Circular No. 72 of the Ministry of Town and Country Planning, which bears the tidings of this colourful discussion, says that it was unanimously agreed to make no change in the colour of the kiosks; they will continue to be painted in post office red. If considerations of exceptional beauty or architectural interest justify it, however, they may be coloured dark battleship grey with the glazing bars of the door and the sides painted in post office red.

This is all very nice, but there is no mention anywhere in the circular of interior decoration. We should have thought the conference would have had a go at that, because at present it appears to vary from kiosk to kiosk and most of it is pretty poor. The wall behind the telephone is the only space that provides any real scope, of course, and in a kiosk we visited recently an agreeable note was struck by a sort of frieze running along this, the chief motif of which was the word "Maisie," interspersed with what looked like vipers and what was definitely an old-fashioned curse. Also included in the scheme of decoration was a series of literal and numerical symbols which we took to be the lady's telephone number. It wasn't, though.

Apart from this charming but misleading item, most of the interior effects which we have seen in telephone kiosks lately have consisted of mere mindless doodling. The only ornamentation which we have noticed appearing regularly is a table of information about various far-fetched sounds which one is supposed to listen for and which it must be a great strain on the operator to deliver. When one has read this there is nothing to look at but the faces of the queue outside, a sight which has a depressing effect on the conversation of all but the most hardy. It is time the interior of the telephone kiosk was brightened up, and we recommend the Ministry of Town and Country Planning and all those other people to get out a circular about it.

While they are at it they might also consider putting up a few elegant signs to inform the weary traveller where the nearest telephone kiosk is. We do not mind whether the signs are got up to look like dark battleships or red post offices, but signs there ought to be. As a matter of fact, it might be a good idea to put them on pillar boxes, because anyone who has traipsed round the suburban streets on a wet Sunday afternoon looking for a phone box will tell you that wherever you seem to remember a telephone kiosk, there you will always find a pillar box. Incidentally, this is probably due to the fact that the unobservant mind merely retains a vague impression of something red in that particular place; we wonder whether the conference thought of that when it decided to keep phone boxes red?

Anyway, it is particularly maddening to be confronted with a pillar box when you want to phone someone up; the blood boils, causing the face to assume the shade known as post office red, and the temptation to shout rude words down the "London and Abroad" opening is strong. If the Council really wishes to preserve rural England in its accustomed purity it will not allow its fellow conferees to rest on their laurels. Convene them all again, and let's really get down and discuss the subject this time. We don't want to hear a sound from that conference room for the next fortnight but an uninterrupted, high-pitched buzz.

R. L. N.

THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED

The report of the directors of The Solicitors' Law Stationery Society, Limited, for the year 1948, states that the sales continued to increase, the total for the year being 14 per cent. higher than for the previous year and constituting a new record. Costs and overhead expenses also continued to rise, and wages in the printing trade were increased early in the year. In accordance with the directors' policy of absorbing higher costs wherever possible, prices were not generally increased, and the profit for the year was lower by £18,910, and amounted to £64,779. The directors recommend that a dividend of 15 per cent. per annum, less income tax, be paid in respect of the year. A bonus will be payable to the staff under the profit-sharing scheme. They also recommend the provision of £13,911 against estimated liability for income tax and profits tax, the addition of £10,000 to the rebuilding reserve, £5,000 to general reserve, and £1,500 to the provision for women's pensions, and the carrying forward of the sum of £20,749 against £20,506 brought forward from the previous year.

The annual meeting will be held at 88–90 Chancery Lane, W.C.2 (First Floor), on Tuesday, 24th May, at 12.30 o'clock.

An extraordinary general meeting will follow at 12.45 o'clock for the purpose of considering and, if thought fit, of passing special resolutions for amending and extending the objects of the company and for adopting new Articles of Association. Copies of the new Articles can be inspected at the Society's Stationery Branches.

Reports of the proceedings at the meetings will appear in our issue of 28th May.

OPENING OF CARDIFF BRANCH

To inaugurate the opening of the South Wales and Monmouthshire Branch of the Society at 75 St. Mary Street, Cardiff, a luncheon was held at the Royal Hotel, Cardiff, on the 3rd May.

Sir Alan Gillett, Chairman of the Directors, presided, and other Directors of the Society present were Sir Douglas Thornbury Garrett and Mr. J. F. Burrell.

Among those who accepted invitations were the Lord Mayor of Cardiff, Mr. Rees W. Nicholas (President of Cardiff Law Society), Alderman G. Williams, the Town Clerk of Cardiff, the Town Clerk of Newport, Col. E. E. Green (Under-Sheriff of Glamorganshire), Mr. E. W. Evans (Under-Sheriff of Monmouthshire), Mr. D. H. Rees (President of Pontypridd Law Society), Mr. W. E. Williams (President of Llanelly Law Society), Mr. D. J. Parry (Clerk of Glamorganshire County Council), and some ninety members of the solicitors' profession in South Wales and Monmouthshire.

In welcoming the guests, the Chairman said that the opening of the branch was an expression of faith in the future of South Wales. He outlined the services which would be available at the new branch and explained that the Society was almost entirely owned by solicitors and was conducted for the benefit of solicitors.

Alderman Robinson (Lord Mayor of Cardiff) replied for the guests, and welcomed the Society to his city. He wondered why a branch had not been opened there long ago.

Mr. Rees W. Nicholas (President of the Cardiff Law Society) also welcomed the Society, and said that what the profession wanted was service and help. The profession needed the Society and the Society needed the profession, and he felt sure that this mutual reliance would grow.

The next quarterly meeting of the LAWYERS' PRAYER UNION will be held at The Law Society's Hall, Bell Yard, W.C.2, on Tuesday, 10th May, at 6 p.m. (tea 5.30 p.m.). At the meeting, to which all lawyers, bar students, articled clerks and friends are heartily invited, Mr. Paul Reed, LL.B., will give an illustrated lecture in technicolour on work amongst South African youth.

The directors of THE LAW ASSOCIATION met at The Law Society's Hall on Monday, 2nd May, to make final arrangements for the annual general court, to be held on Monday, 30th May, and to frame their report for the year. A special meeting of the directors will be held on Monday, 23rd May, at 2 p.m., to deal with June relief cases and the next date on which new cases can be dealt with by the Board will be the first Monday in July.

NOTES AND NEWS

Honours and Appointments

Mr. JOHN SIMMONS, assistant solicitor to Loughborough Corporation, has been appointed an assistant solicitor to the City and County of Bristol.

The British Transport Commission announce the appointment of Mr. M. H. B. GILMOUR as Chief Solicitor to the Commission's new common legal service. The Chief Solicitor will be responsible to the Commission for the operation of the service and will conduct all legal business throughout the Commission's undertaking, except that: in regard to matters not delegated to the executives he will only be responsible for such matters as the Commission decide are not to be retained by the Commission's Chief Legal Adviser; when acting as solicitor for the Railway Executive he will act in conjunction with Mr. H. L. Smedley, who remains legal adviser to the Railway Executive; in the general conduct of all matters for the Road Transport Executive he will act as solicitor only and Mr. Quick Smith will continue to act as that executive's legal adviser. It is intended that, with the exception of the Hotels Executive (which obtains advice from the Railway Executive's Headquarters) each of the other executives shall have the services of an experienced solicitor available at its headquarters. The relationship between the Chief Solicitor and the executives will be that of solicitor and client. Mr. GILMOUR was admitted in 1929 and joined the Parliamentary and General Department of the former Great Western Railway. He was appointed assistant solicitor to the Great Western Railway Co. in 1943 and solicitor in 1945.

OBITUARY

MR. G. L. BROWN

Mr. George Laycock Brown, solicitor, of York, died recently, aged 83. Mr. Brown, who was admitted in 1886, was a former President of the Yorkshire Law Society.

MR. C. R. C. CLUTTERBUCK

Mr. Charles Romanes Coleridge Clutterbuck, solicitor, of Bath, died on 28th April. He was admitted in 1893.

MR. K. F. GRIME

Mr. Keith Forester Grime, solicitor, of Manchester, died on 16th April, aged 30. He was admitted in 1947.

MR. C. PENN

Mr. Charles Penn, who was associated with the firm of Holloway, Blount & Duke, solicitors, of Lincoln's Inn, for over fifty years, died on 25th April.

The Rt. Hon. JONATHAN PIM

The Rt. Hon. Jonathan Pim died recently in Dublin at the age of 90. He was appointed Solicitor-General for Ireland in 1913, was elevated to the judicial bench in 1915 and remained a justice of the King's Bench Division of the High Courts of Justice of Ireland until the new courts were set up under the Courts of Justice Act for the Irish Free State.

MR. H. REEVES

Mr. Harry Reeves, former solicitor in the City and St. Mary Axe, died at Byfleet on the 9th April, aged 84.

MR. T. E. SPROSTON

Mr. Thomas Edge Sproston, former solicitor, of Newcastle, died on 15th April, aged 61. Mr. Sproston was a former clerk of the peace and coroner for the borough.

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